Family Law & Practice
MCLE Meeting
DuPage Judicial Center - ARC
4/16/19

11:45 AM  Welcome/Introductions
Zach Martel – Family Law Section Chair & Henry Kass – Family Law Section Vice Chair

11:45am – 12:15pm  Case Law Updates – Presented by Leah Setzen – Grunyk Family Law

12:15pm-1:00  Dealing with Parental Alienation in Family Law Proceedings
Thomas G. Kenny – Kenny & Kenny

What You Will Learn By Attending This Presentation:

- Pre-Filing Considerations
- Presenting a case involving alienation
- Defending against allegation of alienation
- Developing an alienation case

See Attached for Speaker’s Bio

Next Meeting:  5/21/19 – Henry Kass will be speaking

DCBA Events:
4/18/19 – Happy Hour at Rock Bottom Brewery in Warrenville
4/18/19 – Lawyers Lending a Hand – DuPage Children’s Museum
4/30/19 – 2019 Law Day Luncheon
5/16/19 – Diversity & Inclusion Seminar/Reception in Lisle
Earn CLE Online!

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Name: Thomas G. Kenny  Date: 3/20/19
Organization/Firm: Kenny & Kenny  Title: Partner

Please write one or two paragraphs including the following information:

- College and Degree
- Law School and Year of Graduation
- Current Employment
- Past Professional Employment
- Number of Years in Practice
- Professional Associations:
- Law Related Publications:
- Anything else you would like to include

University of Notre Dame, B.B.A., Finance 1979
DePaul University College of Law, J.D. 1982
Former Kenny & Kenny, Wheaton, IL
Licensed November 1982
Member OCBA, ISBA, ABA
Past Chair OCBA Family Law Committee
OCBA Board of Directors 2002-2005
What Are We Missing?
A Town Hall Conversation on Diversity & its Impact on the Legal Profession

Thursday, May 16th 2019
DoubleTree by Hilton Lisle Naperville
3003 Corporate W Dr
Lisle, IL 60532
2:00pm-5:00pm (1:30 Registration)

Moderator: Hon. Vincent F. Cornelius, 12th Judicial Circuit (Will County)

Speakers
Joseph Flynn, Associate Director for Academic Affairs - Northern IL University Center for Black Studies
Jennifer Adams Murphy, Shareholder and Senior Attorney - Wessels Sherman
Alex Karasik, Associate - Seyfarth Shaw LLP

Topics for Discussion
The Past: Where are we and how did we get there?
The Present: How is diversity shaping the current landscape in the workplace?
The Future: Where should we go and how do we get there?

2 PRMCLE Hours/1 PRMCLE Diversity & Inclusion (Pending MCLE Board Approval)

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For full agenda and online registration, visit www.dcba.org/diversity

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Judge Daniel P. Guerin is Chief Judge of the 18th Judicial Circuit. After graduating from DePaul University College of Law, Judge Guerin worked for thirteen years as an Assistant State’s Attorney in the DuPage County State’s Attorney’s office in the misdemeanor and felony criminal divisions. In March 2003, while working as the Supervisor of the Domestic Violence and Child Abuse Unit of the DuPage County State’s Attorney Office, he was appointed as Associate Judge. In 2010, the Illinois Supreme Court appointed Judge Guerin as Circuit Judge. Since that time, he has served as Presiding Judge of both the Misdemeanor and Felony Divisions.

Judge Guerin is the recipient of many accolades for his professional and community work including the “Felony Assistant of the Year Award” in 1996, the DuPage Family Shelter “Justice System Partner Award” in 2006, and the La Rabida Children’s Hospital “Big Hearts for Young Heroes Award” for his work for victims of child abuse. In addition to his role in the Judiciary of DuPage County, Judge Guerin loves to spend time with his family including his wife and three children. He is an avid reader of history and particularly of American legal and political history. He coaches basketball, soccer, and baseball, and can also be found playing golf on occasion.
DUPAGE COUNTY BAR ASSOCIATION
FAMILY LAW COMMITTEE
April 16, 2019

2018 Year-End Case Updates

Prepared by:
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FAMILY LAW COMMITTEE MEETING
April 16, 2019
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ADMISSION OF EVIDENCE

In re Marriage Moderwell, 2018 WL 170210-U (Ill.App. 2 Dist.), Dec. 10, 2018*

The parties were married and had four children. At the time of trial, only one of the parties’ four children was still a minor. Father represented himself pro se at trial. Father appealed, arguing: 1) the trial court abused its discretion in not allowing him to re-call the Guardian ad Litem (GAL) and denying his motion to continue trial; 2) the trial court abused its discretion in not allowing him to admit into evidence a 4-year tax statement from Fidelity IRAs; 3) the trial court did not have the statutory authority to order him to provide Mother with sworn quarterly income reports; 4) the trial court abused its discretion in order him to pay Mother 30% of any additional income as maintenance and 20% of any additional income as child support; and 5) the trial court incorrectly applied the statute in its child support calculation. Mother cross-appealed, arguing that the trial court abused its discretion by giving Father credit for the amount he previously paid for her interim attorney’s fees that were derived from a home equity line of credit (HELOC).

Regarding re-calling the GAL, the court found that Father was presented with the opportunity at trial to cross-examine the GAL when the trial court provided him the opportunity to call the GAL out of turn, noting to Father that there was no subpoena outstanding. The trial court further suggested that Father could have secured the GAL’s later availability at trial by issuing a subpoena. The court stated that pro se litigants are not entitled to more lenient treatment and that the trial court did not abuse its discretion in its denial of his motion to continue the trial.

Next, regarding the Fidelity tax statements, the court found that the trial court did not abuse its discretion in barring said exhibit, as there was no authentication and a lack of foundation to admit same. The court further noted that said documents were not presented during Father’s case in chief, nor were the documents timely produced in discovery.

As to quarterly income reports, the court found the record to clearly establish that Father was not forthcoming with financial information and was non-compliant with the trial court’s orders and directions; therefore, it was reasonable for the trial court to ensure Father’s compliance with its judgment for dissolution by ordering him to provide said quarterly sworn income statements.

Next, regarding the payment of a percentage of additional income earned, the court found that Father had several opportunities at trial to request a cap on maintenance and child support payments, but never once raised the issue. Therefore, Father forfeited this argument on appeal.

Finally, Father argued that although the trial court properly found that no extenuating circumstances existed for it to depart from statutory guideline child support calculations, the trial court incorrectly applied the statute in its calculations. The court agreed, citing that the trial court erred in not deducting Father’s monthly maintenance payments when calculating 20% of Father’s net income for child support.

Regarding Mother’s issue on appeal, the court found that the trial court was “clearly aware” that Father used a portion of the HELOC in making interim payments toward her attorney’s fees, and explicitly ordered that Father be given credit for said interim payments. Thus, the court declined to disturb the trial court’s determination of contribution that Father is to make on review.

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ADOPTION

In re Adoption of M.R.G., 2018 WL 229541 (III.App. 3 Dist.), May 18, 2018

Father appealed from the judgment of the circuit court in which he was found to be an unfit parent to the biological child, and the court terminated his parental rights. During the trial, Father testified that he did not know that Mother was pregnant until the child was four months old. Mother testified that during her pregnancy, she sent messages to Father via text, Facebook and voicemail. The day before the child was born, Mother testified that she texted Father to tell him that the baby would be here soon, and that he responded with “K.” At the close of evidence, the trial court found that the Petitioners (Mother’s parents; Mother had signed the consent for adoption) had shown by clear and convincing evidence that Father was unfit in that he failed to demonstrate a reasonable degree of interest, concern or responsibility as to the welfare of a newborn child during the first 30 days after his birth.

The court found that where a petitioner alleges that a parent is unfit because of his failure to demonstrate a reasonable degree of interest, concern or responsibility toward a newborn within 30 days of its birth, fitness is determined by the efforts the person makes to communicate with or show interest in the child. The test is whether the parent’s efforts demonstrated a reasonable degree of interest, concern or responsibility. Further, even if the court believed that Father did not know about the baby, he still had a statutory responsibility to take affirmative steps to establish his rights within 30 days of the newborn’s birth. Further, arguing that he did not know the location of the baby is a failed argument because he had Mother’s phone number and Facebook contact information.

ALLOCATION OF PARENTING TIME AND RESPONSIBILITIES

In re Marriage of Abu-Ghallous, 2018 WL 5099296 (III.App.2 Dist.), Oct. 17, 2018*

The parties were married in 1999 and had two sons. The children had both American and Palestinian passports. In 2013, Husband filed a petition for dissolution of marriage. A joint custody judgment was entered, which stated that extended parenting/vacation schedules were to be exercised within the United States only. The issue of international travel with the minor children was reserved. In 2018, Husband filed a petition to take an international trip with the children to Poland. The trial court granted Husband’s petition. Later in 2018, Husband filed a motion to modify the provision of the joint custody judgment. Husband wanted each party to be able to travel domestically with the children by plane without seeking the other party’s written consent. The trial court granted the motion to modify, stating that there was a change in circumstances as the children were older.

Wife appealed, arguing that the trial court failed to conduct a proper modification proceeding in that it did not require Husband to prove the modification was in the children’s best interest and that there had been a substantial change in circumstances. The appellate court reversed and remanded the ruling of the trial court. The trial court’s decision to modify the agreement to remove the consent-to-travel provision was against the manifest weight of the evidence and an abuse of discretion. Wife had been allocated decision-making authority surrounding travel, and the trial

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court has reallocated that authority by removing the consent-to-board provision from the joint custody judgment. The trial court did not require Husband to prove the best interests and substantial change elements.


Mother filed a petition to determine paternity of the two minor children, F.J., born in 2008, and L.J., born in 2010, and for determination of parenting time and setting of child support. The parties lived together with the children until 2013. At that time, Mother moved out of the shared residence and moved with the minor children to her grandfather’s residence. Mother and Father had a volatile relationship. Both parties presented testimony as to why he/she should have majority of parenting time with the minor children. The trial court found that during the time the parties resided together, they were both active in the children’s lives. The court noted that after the parties separated Father’s parenting time was not consistent; however, Mother did restrict Father’s parenting time since the filing of the paternity case. The court noted in the fall of 2016, Mother moved to Earlville with the children without consulting Father. Father resided in Seneca with his wife, their son and her two (2) children. The trial court found that Mother attended to caretaking functions more than Father did in the twenty-four (24) months preceding the filing of the petition to establish paternity. The court noted that the parties lived relatively close to one another, and both parties worked part time and thus had the ability to spend a lot of time with the minor children. The court found that both parties failed to facilitate a relationship between the minor children and the other parent. The court awarded the parties alternate weeks with the children in the summer. During the school year, Father would have alternating weekends from after school on Thursday until 5:00 p.m. on Sunday, as well as every Tuesday from after school until 7:00 p.m. On weeks Father did not have weekend parenting time, he would have the children on Thursday evenings from after school until 7:00 p.m. Mother’s address would be designated for school purposes. The trial court ordered that the parties jointly make decisions relating to the minor children’s education and healthcare. No right of first refusal was implemented, as the court found it was in the best interest of the children not to award same. No evidence was presented regarding the wishes of the minor children.

Father appealed, arguing that the trial court’s allocation of parenting time was not in the best interests of the children. The appellate court affirmed the decision of the trial court. The appellate court affords great deference to the trial court’s findings, as that court is in a far better position to observe the temperaments and personalities of the parties and assessing the credibility of the witnesses. The appellate court found that the trial court’s allocation of parenting time was not against the manifest weight of the evidence. The appellate court found it significant that the trial court considered Mother had attended to the majority of caretaking functions in the preceding twenty-four (24) months prior to filing her petition, and that the children had always primarily resided with Mother since they moved out of the home they shared with Father. The trial court did not err in refusing to award the right of first refusal, as the parties testified that they did not communicate well.

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The parties were married in 1990 in Illinois and had three children together. The parties divorced in Ohio in 2008. As part of the dissolution judgment, the parties agreed to joint custody of their children. The parties alternated two-week periods having the children. Thereafter, the parties moved back to Illinois and the Ohio judgment was registered in Illinois. In 2013, the court granted a petition to modify custody, filed by Mother, due to the parties’ inability to communicate effectively and Father’s minimal relationship with one of the children. However, the court allowed the joint parenting time schedule to continue for one of the children who did not appear to be adversely affected by the parties’ inability to communicate. In late 2015, Father filed a petition to modify parental responsibilities, alleging that Mother failed to notify him of the child’s medical care and that Mother had the child’s school block his access to the child’s school information, including grades and contact information. Father requested that parental responsibilities be allocated to him. At the hearing on the matter, the court found that there was no substantial change in circumstances to justify the modification of parental responsibilities, finding that Father had access to the child’s educational information and that the parties could still not communicate effectively. Father appealed. On appeal, the court upheld the trial court’s decision, relying on the evidence that was presented to the court indicating that the parties continued to fail to communicate regarding their child. Further, the court noted that Father had presented no evidence to show that the child was adversely affected by the situation, but rather the child was excelling in school and her health and education were not negatively impacted by the parties’ behavior. Therefore, the court affirmed the judgment of the trial court.

Six children were born during the parties’ marriage. The parties separated, and Father had parenting time with the minor children. A year after separating, Father filed a petition for dissolution of marriage. After he filed the petition, Wife stopped bringing the children for visits with him. Further, the younger children begin to allege that they were sexually abused by their Father. Over 10 reports were made to the Department of Children and Family Services, and each report was unfounded. A guardian ad litem (GAL) was appointed, and the younger children attended therapy.

During the course of the proceedings, two of the sons pleaded with the GAL to have them removed from Mother’s care. The boys alleged that Mother pressured them and the other children to say bad things about Father, and she interrogated them about visits with their Father. The GAL filed a verified motion for an order of protection on behalf of the sons. The motion was denied, an evaluator was appointed, and Father was granted temporary custody of the sons. During the trial on this matter, the GAL and evaluator testified that Father should have custody and that Mother could not facilitate a relationship with the children and Father. The trial court awarded Father sole parental responsibilities and majority of the parenting time.

On appeal, Mother argued that the court erred in following the recommendations and inaccurate testimony of the GAL. On review, the appellate court found that the evidence overwhelmingly supported the court’s conclusion that Mother deliberately interfered with the children’s relationship with their Father to the detriment of the children. There was also ample evidence to support the court’s conclusion that the allegations of sexual abuse against Father was the result of coaching.

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by Mother. With regards to the GAL, the appellate court opined that they did not believe that her actions on behalf of the children demonstrated a bias towards Mother. The appellate court also found that the GAL properly investigated this case. Therefore, the decision of the trial court was affirmed.

_In re Marriage of Carr, 2018 WL 180009 (Ill.App. 5 Dist.), June 19, 2018*

The parties were married in October 2007 and divorced in April 2014. The parties had one minor child. In April 2014, a judgment of dissolution of marriage was entered in which the trial court found that both parties were fit and proper persons to have joint parental decision-making of the minor child. The parties were awarded alternating week-to-week parenting time.

In January 2015, the trial court considered Father's motion to reopen proofs based on Mother's continual lack of improvement in communication with Father. The parties were ordered to attend mediation, which was unsuccessful. Father then filed a motion to modify the parenting schedule, requesting designation as primary residential custodian of the minor child and modification of the current parenting schedule. After a hearing, the trial court ordered the continuation of joint parental decision making and changed the primary residential custodian to Father. Mother filed a motion for reconsideration, which was denied. Mother subsequently appealed. The appellate court vacated the trial court's order, finding that the trial court erred in focusing solely on the best-interest factor concerning the willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the other parent and the child. On remand, the trial court held a hearing on parenting time.

In August 2017, the trial court entered an order allocating parental decision-making and parenting time, affirming its previous order awarding joint decision-making to the parties. The trial court further considered all of the requisite best-interest factors, and found it was in the minor child's best interest for Father to be awarded the majority of the parenting time during the school year. Mother filed a motion to reconsider, which was denied. Mother subsequently appealed the trial court's parenting-time allocation.

On appeal, the appellate court first recognized that 750 ILCS 5/602.7(b) sets forth mandatory factors to be applied by the trial court in determining parenting time. The appellate court found that the trial court's order was not against the manifest weight of the evidence or an abuse of discretion. In particular, the appellate court found that it was not in the minor child's best interest to commute over 90 miles between the parties' homes and attend different preschools. The appellate court further stated that fact alone required a change in parenting time. The appellate court also pointed to numerous examples in the record that evidenced Mother's unwillingness to facilitate and encourage a close and continuing relationship between Father and the minor child. Based on the above, the appellate court affirmed the trial court's judgment.

_In re Marriage of Fowler, 2018 WL 706756 (Ill.App. 4 Dist.), Feb. 2, 2018**

The parties were married for just shy of 12 years and had one son. Husband filed for a legal separation and Wife followed with a counter-petition for dissolution of marriage. The case went to trial over allocation of parenting time and responsibilities, which involved the retention and testimony of a Guardian ad Litem and 5/604.5 Evaluator. The trial court agreed with the findings of the 604.5 evaluator and that Wife suffered from a delusional disorder. Husband was found to

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be in good health. The trial court expressly addressed the factors in 5/602.7(b) and 5/603.10 of the Illinois Marriage and Dissolution of Marriage Act (IMDMA) and awarded Husband sole decision-making authority for the parties' minor child. The trial court found that Wife was unable to work with Husband to make decisions on behalf of the minor child. The trial court further found that Wife was unwilling to facilitate a relationship between the minor child and his Father, wherein Husband was willing to facilitate the relationship between the minor child and his Mother. Wife was to have supervised parenting time and was ordered to cooperate with a mental health evaluator and comply with the recommended treatment. Wife appealed.

On review, the appellate court found that the trial court weighed each factor of section 5/602.7 of the IMDMA and also looked at the best interests of the child pursuant to 5/602.5(a) of the Act. The appellate court stated that the trial court's findings that Wife suffered from a delusional disorder was not against the manifest weight of the evidence, and that Wife's mental health prevented her from putting the minor child's needs first. The appellate court affirmed the trial court's judgment awarding Husband sole decision-making authority and granting Wife supervised parenting time.

In re Marriage of Kellybuttel and Kelly, 2018 WL 180352-U (Ill.App.2 Dist.), Sept. 24, 2018*

The parties were married and had one child. Father had children from a previous marriage. In February 2015, the trial court entered a judgment of dissolution of marriage, incorporating the parties' marital settlement agreement and joint parenting agreement ("JPA"). The JPA split parenting time relatively equally and appeared to contemplate frequent and extensive travel with the minor child. In November 2017, Father filed a petition to modify the allocation of parenting responsibilities. Mother subsequently filed a motion to dismiss and a hearing was held in April 2018. In her motion to dismiss, Mother argued that Father had not included any allegations indicating that there was a substantial change in circumstances, and that any changes were contemplated by the terms of the JPA. The trial court granted the motion to dismiss with regard to Father's petition to modify the allocation of parenting responsibilities (note there was a separate agreement referenced in the trial court's order reached by the parties pertaining to clarifying the language for holiday weekends in the JPA). Father appealed.

On appeal, Father argued that the trial court erred in granting Mother's motion to dismiss on the grounds that there was not a substantial change in circumstances and in not addressing the merits of his petition to modify. Father further contended that the trial court erred in interpreting section 610.5(c) of the Act. The court looked to Father's petition and found Father's allegations to be "wholly conclusory" and reflected issues within the parties' contemplation when the JPA was first entered. In particular, Father alleged in his petition that: 1) the minor child's school days and school hours had substantially changed; 2) the minor child had developed an extremely close bond with her older step-siblings; and 3) the current winter break holiday schedule required excessive expense and time on the road, thus interfering with the minor child's visitation time with her Father and paternal family. The court noted that the trial court repeatedly questioned Father at the hearing on whether he was alleging anything new or anything that was not already contemplated by the parties at the time of the entry of the JPA. The trial court further emphasized to Father that, until the trial court had resolved Mother's motion to dismiss, it was not looking for

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evidence to support his above-listed contentions. On appeal, Father also contended that the best-interest factors from section 602.7(b) of the Act should come into play. In response, the court found this argument was misplaced, as said factors are to be considered when the trial court considers the merits of the petition to modify. Again, the court pointed out that the first step that must be satisfied is whether there has been a substantial change in circumstances.

Father also argued on appeal that the trial court should have considered, pursuant to section 610.5(e)(1), whether the JPA should be modified to conform to the actual parenting time schedule that the parties were following. The court noted that Father did not allege what the actual arrangements were, nor did he allege that Mother agreed to same. Therefore, the court found that there were no sufficient allegations in the petition to modify to support a claim under section 610(e)(1).

*Langan v. Frost, 2018 WL 6288144 (Ill.App. 2 Dist.), Nov. 30, 2018*

After trial, the court awarded Father unsupervised and overnight parenting time. At the time of trial, the child was eight months old. Father never had overnight time with the child, and Mother was still nursing the child. Mother had an order of protection against Father for stalking. At trial, Mother testified that Father had continued to stalk her. Father was awarded every other Friday through Sunday overnight, alternating Saturdays during the day, and Tuesday evenings.

Mother appealed. On appeal, the court found that absent a finding that visitation would seriously endanger the child’s physical, mental, moral, or emotional health, requirements that visitation be supervised and prohibitions on overnights are improper restrictions on visitation. There were no findings of serious endangerment in this case. The additional harassment claimed by Mother was unfounded and the incident that resulted in the Order of Protection occurred prior to the child’s birth. The appellate court found that the court’s visitation schedule recognized the importance of both parent’s involvement in their child’s upbringing, and the judgment was not against the manifest weight of the evidence.

*In re Marriage of Lillig, 2018 WL 180018-U (Ill.App. 5 Dist.), Sept. 18, 2018*

The parties were married and had three children. In 2013, Father filed for a petition for dissolution and the trial court appointed a guardian ad litem (“GAL”). In 2014, the trial court entered a temporary order granting Mother sole custody and directing that Father should have at least one weekend per month of parenting time. Later that year, the trial court awarded both parties temporary joint custody. A few months later, the GAL opined that Father should be granted sole custody and recommended that the parties jointly share decision-making responsibility. Nevertheless, the parties advised the trial court that they had reached an agreement, and the trial court entered a joint custody and joint parenting order incorporating the agreed upon terms. A few months later, Mother filed for an emergency order of protection against Father, which was denied by the trial court. Next, Father filed two separate petitions for rule to show cause (one month apart) alleging that Mother was failing to abide by the joint parenting schedule and was violating the agreement by taking the minor children to doctor’s appointments with his knowledge or consent. Mother filed a petition to modify parental responsibility, requesting exclusive decision-making authority. Father subsequently filed a motion to reappoint the GAL, to which Mother objected. The trial court granted the motion to reappoint the GAL and found Mother in contempt.

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on both of Father’s petitions for rule to show cause. Just two months later, Father filed a motion for an emergency order regarding the children’s immunizations, specifically alleging that Mother had refused to allow the minor children to be immunized. A hearing was held, at which the GAL opined that Mother had violated the terms of the joint parenting order. The trial court entered an order granting Father the authority to have the minor children vaccinated.

Both parties continued to file motions, resulting in the trial court proceeding to a hearing on Mother’s motion for modification of parenting time, Mother’s petition to modify parental responsibility, and Father’s petition to modify the trial court’s child custody and joint parenting order. At the extensive hearing, multiple teachers (including special education specialists, as one of the parties’ minor children had autism spectrum disorder), a school principal, therapists, physicians, and Father’s wife testified regarding the interactions between the parties and the parties’ ability (or inability) to make major parenting decisions. Largely, the testimony skewed in favor of Father, who was generally regarded as more reasonable, especially concerning medical decisions for the minor children. Mother was generally construed as temperamental and even disingenuous with Father, physicians, and school workers to achieve her wishes for the minor children. As a result, the trial court entered a 35-page allocation of parental responsibilities judgment that indicated that Mother was not credible and had failed to prove any of the allegations set forth in her pleadings. The trial court further determined that it was in the minor children’s best interests that Father be granted the sole decision-making authority with respect to the minor children’s healthcare and education. Additionally, the trial court ordered that it was in the minor children’s best interests to reside with Father and that Mother be given the first three weekends of every month for parenting time. In response to the judgment, Mother filed a motion for mandatory recusal. Another judge considered the motion and entered an order denying it. Next, Mother filed a motion to reconsider, which was also denied. Finally, Mother appealed.

On appeal, the court found that the determinations made by the trial court were in the minor children’s best interests and not against the manifest weight of the evidence. In its ruling, the court praised the trial court for making specific findings with respect to all of the statutory factors when determining that it was in the minor children’s best interests to allocate Father with the parental decision-making responsibilities regarding education and healthcare. In regards to parenting time, the court found that the trial court was correct in finding that Father had proven, by a preponderance of the evidence, that since the entry of the joint parenting order, a substantial change had occurred in the circumstances of both the minor children and the parties and that it was in the minor children’s best interests that Father be given the majority of the parenting time. The court further pointed out that the evidence showed that Mother had attempted to alienate Father from the minor children and marginalize his role as a father.

*Matthew S v. Andria C, 2018 WL 4520491 (Ill.App. 4 Dist.), Sept. 18, 2018*

Father, while incarcerated, petitioned for allocation of parental responsibilities. He requested shared decision-making authority and shared parenting time. Father had been in jail since 2012 and was not scheduled for release until 2035. The trial court denied Father’s request for in person parenting time at the prison. The court allowed Father to have parenting time in the form of writing letters to his children twice per month.

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On appeal, Father argued that limiting his parenting time to written letters was against the manifest weight of the evidence. The appellate court found that the distance between Mother’s residence and the jail was 235 miles by car and there was no direct access by train. Further, there was evidence to suggest that the children suffered mental distress when they had previously visited their Father. Therefore, the appellate court found that it was not in the children’s best interest to have in-person visits with Father.

*In re Marriage of Peterson*, 2018 WL 389120 (Ill.App. 2 Dist.), Jan. 11, 2018*

The parties were married in 2003 and had twins born in 2007. In 2014, a judgment for dissolution of marriage was entered that incorporated a marital settlement agreement and joint parenting agreement (JPA). The parties agreed to joint custody of the children and equal parenting time, with the children continuing to attend the same elementary school. Two years later, Mother filed a motion to modify the JPA stating there was a substantial change in circumstances due to her work schedule and the children’s medical and emotional needs. Dr. Roger Hatcher was appointed to conduct psychological evaluations. The trial court gave greatest weight as to the following factors: the children’s wishes; the amount of time each parent had spent on caretaking functions in the 24 months preceding the filing of the petition; the children’s adjustment to home, school, and community; the mental and physical health of the children; and the distance between the parties’ residences. Dr. Hatcher opined that the children would be better off if Mother had a majority of the parenting time due to her better ability to deal with one child’s diabetes. The trial court agreed with Dr. Hatcher’s findings and commented that the change may not be in the parent’s best interests, but it was in the children’s best interests.

Father filed a motion to reconsider and argued that the trial court failed to find that a substantial change in circumstances had occurred. The trial court denied the motion to reconsider, and Father appealed.

Father argued that at the time of the entry of the JPA, the parties stipulated that both parents were fit and proper to have joint custody of the children. Father argued that in Mother’s motion to modify custody, she did not allege or demonstrate Father was not a fit or proper parent. Father argued that the trial court reviewed and applied the 17 factors listed in section 602.7 of the Act, but instead of focusing on the totality of the circumstances, it improperly put the greatest weight on only five of the factors. The appellate court affirmed the decision of the trial court, and stated that depending on the circumstances of the case, some factors will be more relevant than others.

*In re Marriage of Tashakori and Farokhi*, 2018 WL 180368-U (Ill.App.2 Dist.), Oct. 15, 2018*

The parties were married in 2000 and had two minor children. In 2015, Father filed a verified order of protection seeking protection for himself and the two minor children, and the trial court granted an emergency order of protection. Mother filed a petition for dissolution of marriage and a petition for temporary relief requesting the award of custody of the minor children. Father responded by filing a counter-petition for dissolution of marriage and temporary relief. A guardian ad litem was appointed, and the case proceeded to a hearing on the allocation of parenting time. Several witnesses testified at the hearing, including a clinical psychologist appointed by the trial court to perform a child custody evaluation. The trial court issued a ruling that closely examined

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the factors under Section 602.7. In particular, the trial court found that each parent wished to have parenting time. As to the children’s wishes (note that the parties agreed that the trial court should not talk to the children), the guardian ad litem opined that the children preferred to live with Father and visit Mother. The trial court further noted that Mother had “clearly” performed the vast majority of the children’s caretaking functions for their entire lives prior to Father’s 2015 emergency order of protection.

Next, the trial court considered that the children appeared to have a “normal interaction with each other and ‘off and on, good and bad relationship’” with both parties. The trial court next determined that although there were inconsistencies with the children’s adjustment to their homes with both parents, the children were “acceptably adjusted” to both homes. Next, the trial court found both parties to be in good mental health. As for the children’s needs, the trial court agreed with the court-appointed psychologist that the children needed a parent who could exercise stable and authoritative parenting. The trial court further found that neither transportation nor daily schedules created an impediment to parenting decision between the parties. Next, the trial court found that a restriction on parenting time was not appropriate.

As for physical violence, the trial court noted that it believed Mother had trouble controlling her temper when it came to managing the children’s behavior. Both parents were found the be able to prioritize the children’s needs, albeit a recent demonstration of willingness on Father’s behalf. Next, the trial court noted that both parties had “issues” in their willingness to facilitate and encourage a close and continuing relationship with the other parent and the children. The trial court found that neither parent had abused the children. The trial court found that the remaining factors were not directly applicable. After a consideration of the testimony and factors as above listed, the trial court awarded the majority of parenting time to the Father. Mother appealed.

On appeal, the standard of review was whether the trial court’s decision was against the manifest weight of the evidence. The court found that the trial court’s allocation of parenting time was largely consistent with the recommendations of the court-appointed psychologist and the guardian ad litem and noted that both were “independent professionals appointed by the court to assist it with making such a determination.” The court affirmed the trial court’s judgment.

*In re Custody of T.D. and J.D., 2018 WL 2347141 (Ill.App. 5 Dist.), May 22, 2018*

The parties were never married but had two children together. The parties began their relationship in 2011 and separated in 2016. In 2016, Father filed his petition for determination of paternity and judgment of parental responsibility and parenting time. A guardian ad litem (GAL) was appointed. The GAL found that for a few months, Mother did not let Father see the children. Mother was residing with her paramour, and the parties’ two children shared very small living quarters with the paramour’s two children. In 2017, the trial court entered a judgment of parenting time and responsibilities, granting Father the sole decision-making responsibility and awarding him the majority of parenting time. The trial court found that Mother had refused to provide Father with the children’s medical providers and had refused to let Father see the children. Father was more stable, as he had lived in the same residence for years and facilitated a relationship between the children and Mother’s family.

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Mother filed an appeal. The appellate court affirmed the decision of the trial court. The appellate court noted that a trial court's findings as to a child's best interest are entitled to great deference as the trial court is in a better position to observe the personalities and temperaments of the parties and assess the credibility of the witnesses. The appellate court found that the trial court's ruling was not against the manifest weight of evidence, was manifestly unjust, or was the result of an abuse of discretion.

*In re Marriage of Van Dorn*, 2018 WL 180234-U (III.App. 5 Dist.), Nov. 30, 2018*

The parties were married and had three minor children. Father filed a petition for dissolution of marriage and both parties sought the majority of parenting time. The trial court awarded Mother the majority of parenting time and primary decision making. Father appeals the same, in addition to appealing the trial court's award of child support. On appeal, Father first argued that, based on his parenting time under a former temporary agreed order, the trial court's decision on his parenting time amounted to an improper restriction. The court found that the trial court's award was based on the best interests of the children, in that the parties' oldest child was beginning to attend school, so the parties' schedules were changing and long travel exchanges between homes did not serve the children's best interests. The court noted the evidence also revealed that exchanges were filled with tension between the parties, so the children would be best served by limiting exchanges. The court found that the trial court's order was not considered a restriction and did not require consideration under the more stringent endangerment standard. Alternatively, Father also argued that the trial court failed to evaluate the best-interest-of-the-child statutory factors in allocation parenting time. The court examined the factors under Section 602.7, finding that the trial court did not abuse its discretion in awarding the majority of parenting time to Mother.

Father next challenged the award of sole decision making to Mother. The court noted that the evidence supported the conclusion that the parties were unable to cooperate to make decisions and that their high level of conflict would detrimentally affect their ability to share decision-making. The court further pointed out the Guardian ad Litem reported that Mother would be more likely to make decisions in the best interest of the children and less likely to be motivated by the need to dominate. Based on the relevant best-interest factors favoring Mother, the court found that the trial court's decision was not an abuse of discretion. Finally, Father challenged the trial court's calculation of child support. Specifically, Father argued that the trial court considered his disability insurance income in determining his monthly child support amount. Said amount would be offset by his worker's compensation award, allegedly making any child support awarded from worker's compensation proceeds duplicative. The court agreed and found that the record failed to support the child support calculation from Father's lump-sum worker's compensation distribution. The court noted that the trial court did not provide a statutory basis for the lump-sum award or a basis for deviating from the statutory guidelines. On this issue, the court reversed and remanded with a direction to the trial court to consult statutory guidelines to determine Father's child support obligation.

* Unpublished/Rule 23(e)(1) decision.
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In re Marriage of Yost, 2018 WL 180283-U (Ill.App. 4 Dist.), Sept. 13, 2018*

The parties married in 2013 and had one minor child. In 2017, a judgment was entered by the trial court following a five-day trial, which ordered: (1) joint decision-making responsibilities and equal parenting time, (2) that Mother’s two petitions for orders of protection against Father were denied, (3) that Mother’s petition to hold Father in indirect civil contempt for failing to pay her health insurance was denied, (4) no maintenance award for Mother, and (5) an equal divide of the equity in marital property. Mother appealed on all issues.

First, on the issue of decision-making responsibilities and equal parenting time, the appellate court noted that there was conflicting testimony as to who was the primary caregiver prior to the parties’ separation, among other factors. The court stated that given the conflicting testimony, the court would not substitute its judgment for that of the trial court. Thus, the court found that the trial court’s decisions to allocate joint decision-making responsibilities and equal parenting time were not against the manifest weight of the evidence.

On the issue of the denial of Mother’s two petitions for orders of protection against Father, the court again cited the conflicting testimony and declined to substitute its judgment for that of the trial court. The court did not find the trial court’s findings of no abuse as against the manifest weight of the evidence.

As for the denial of Mother’s request to hold Father in indirect civil contempt, the court noted that the trial court agreed with Mother that Father’s refusal to pay for her health insurance (as previously ordered) was willful and contumacious. However, the court found that the trial court correctly found that Mother failed to sufficiently establish a loss based on Father’s conduct. Therefore, the court found that the trial court’s finding was not against the manifest weight of the evidence.

Next, the court addressed Mother’s argument that the trial court’s decision to deny her request for a maintenance award was an abuse of discretion. The court found that the trial court appropriately addressed Mother’s and Father’s earning capacity, noted that Father would be assuming a considerable portion of the parties’ financial obligations and would be required to make two substantial payments to Mother to equalize the equity in the marital property, and that Father had been paying Mother $3,600 per month in temporary maintenance. The court found that given the above referenced factors, the trial court’s decision to deny Mother’s request for maintenance was not an abuse of discretion.

Finally, the court considered Mother’s argument that the trial court’s equal division of the equity in the marital property was an abuse of discretion. The court noted that the trial court allocated to Father marital assets with significant debt and allocated to Mother assets with minimal debt, plus two substantial cash equalization payments. As such, the court found that the division of marital assets by the trial court was fair and equitable and that the trial court did not abuse its discretion in its division of the marital property.

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See also DEBT, *In re Marriage of Capelle*, 2018 WL 180011 (Ill.App. 5 Dist.), June 21, 2018*

See also MAINTENANCE, *In re Marriage of Miller*, 2018 WL 4232252 (Ill. App. 4 Dist.), September 5, 2018*

See also ALLOCATION OF PARENTING TIME AND RESPONSIBILITIES, *In re Marriage of Van Dorn*, 2018 WL 180234-U (Ill.App. 5 Dist.), Nov. 30, 2018*

**APPEALS**

*In re Marriage of Bordyn*, 2018 WL 2046724 (Ill.App. 2 Dist.), May 1, 2018*

On December 5, 2018, the trial court entered an order resolving the remaining issues. On January 4, 2018 (30 days), Husband electronically transmitted a notice of appeal and notice of filing to the circuit court. The filing system issued a confirmation and listed receipt of same at 2:37 pm. However, the next day (the 31st day) at 9:40 am (approximately 18 hours after the filing), Husband received a transaction review result, reflecting that his upload was rejected because the notice of appeal and notice of filing were sent as two separate documents. On March 1, 2018, the court granted Wife’s motion to dismiss the appeal as untimely.

On review, the court found that upon learning of the rejection, Husband still had recourse under Supreme Court Rule 303(d) which permits, in certain circumstances, an extension of time to file a notice of appeal. Unfortunately, the rule requires to motion to be filed “within 30 days after expiration of the time for the notice of appeal.” Therefore, it was too late for Husband to file under Rule 303(d). However, Husband may still request supervisory or other relief from the Supreme Court.

The court noted that while the result was harsh, and there seems to be no deadline for the clerk’s office to comply in the process of accepting or rejecting submitted jurisdictional documents, the court cannot make exceptions to jurisdictional requirements.

*Cavitt v. Repel*, 2018 WL 172087-U (Ill.App.1 Dist.), Sept. 28, 2018*

The parties were never married but were the biological parents of one child. In September 1995, Mother filed a petition for parentage in support. Later, in June 2009, Mother filed a petition for modification of child support and other relief. From June 2009 to Mother’s notice of appeal, there were numerous pleadings filed and multiple transfers of judges. For the purpose of this review, the trial court entered an order in December 2016 stating that a child support order of November 2013 stands and that the court finds that it lost jurisdiction to further modify support. In January 2017, without seeking leave, Mother filed a motion to reconsider, which was struck by the trial court. A month later, Mother filed a “combined motion” seeking leave to file a motion to vacate the January 2017 order and to file a motion for reconsideration. The trial court subsequently denied the February 2017 and Wife filed a notice of appeal in August 2017.

On appeal, the court addressed whether it had jurisdiction based on the timeliness of Mother’s filing. The court found that Mother failed to file a notice of appeal, or post-judgment motion, pursuant to Rule 303(a) within 30 days of the trial court’s final order (the December 2016 order). However, Mother admittedly failed to seek leave to file her motion for reconsideration. The court

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pointed out that Mother’s subsequent February 2017 motion did not delay her deadline to file a notice of appeal. The court further noted that this case “exemplifies the concern for never-ending litigation” as expressed by the Supreme Court in Sears v. Sears, 85 Ill. 2d 253 (1981). Therefore, the court found that Mother’s failure to file a timely notice of appeal resulted in the court’s lack of jurisdiction to decide the merits of the appeal.

_In re Marriage of Cinque_, 2018 WL 6163384 (Ill.App.1 Dist.), Nov. 21, 2018*

In May 2007, the trial court entered a judgment for dissolution of marriage and granted Wife sole custody of the parties’ minor child with visitation to Husband. In April 2014, Husband filed a petition to modify custody and then in May 2015, Husband filed an amended petition to modify custody. The April 2014 petition alleged Wife adversely affected the relationship between Husband and child and that Wife interfered with his visitation. The May 2015 amended petition alleged that there had been a substantial change in circumstances in that the child’s grades were suffering, and the child demonstrated behavioral issues. In 2017 a hearing was held, and the trial court ordered that Wife should remain residential parent of the child, outlined what Husband’s parenting time would be, and ordered the parties shall continue to have joint decision-making.

Husband filed an appeal from the trial court’s order denying his petition to modify. The appellate court found that Husband’s brief contained several deficiencies: there was a list of three statutes and one case with no headings and no page numbers; he did not state the judgment appealed from or whether “any question is raised on the pleadings”; he did not provide an adequate statement of the issues presented for review and statement of jurisdiction; the statement of facts contained no references “to the pages of the record on appeal”; and he failed to state “the precise relief sought”. The appellate court found that the deficiencies in Husband’s brief provided sufficient grounds to dismiss the appeal. Based on Husband’s failure to comply with Illinois Supreme Court Rule 341, his appeal was dismissed. The trial court’s judgment was affirmed.

_In re Marriage of Del Galdo_, 2018 WL 182063-U (Ill.App. 1 Dist.), Dec.14, 2018*

Wife’s petition for dissolution of marriage has not been resolved and remains pending and undetermined before the trial court. As a result of the parties engaging in a multitude of discovery disputes, and after several protective orders were entered, counsel for Wife, Mr. Kirsh, issued FOIA requests to government entities represented by Husband’s law firm. The FOIA requests list Kirsh as the individual seeking the records, but also included Kirsh’s firm on the address lines and in other areas. In response, Husband filed a two-count emergency motion for supervised discovery and for a temporary restraining order and preliminary injunction, asserting the FOIA requests were harassing and intended to pressure him into a settlement. The trial court held a hearing at which a different attorney from the firm representing Wife argued that the trial court lacked authority to enter an order directed at Kirsh individually. The trial court denied Husband’s request to supervise discovery, based on the representation that Kirsh submitted the FOIA requests individually, and not as Wife’s counsel or agent. The trial court further granted Wife’s motion to strike and dismiss the injunctive relief requested in Husband’s emergency motion. After the hearing, Kirsh filed a _pro se_ appearance and a motion for substitution of judge as a matter of right but did not seek leave to file the appearance or to intervene in the case. After a hearing on

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Kirsh’s motion, the trial court entered an order stating that the original order had not been entered against Kirsh individually, but rather, as an agent of Wife and therefore the motion for substitution was denied and Kirsh was individually dismissed as party in the matter. Kirsh appealed.

On appeal, the court determined whether the order that denied Kirsh’s motion for substitution of judge as of right falls within the meaning of “injunction” and would be appealable under Rule 307(a)(1). The court found that said order did not direct him or any other person to take or refrain from taking any action. The court noted that, even when interpreted broadly, the order cannot be viewed as having the force and effect of an injunction. The court further noted that Kirsh had not appealed from the order dismissing the claim for injunctive relief, but instead solely from the order denying his motion for substitution of judge. Thus, the court dismissed the appeal.

*In re Marriage of Greenberg*, 2018 WL 171224-U (Ill.App. 1 Dist.), Dec. 27, 2018

A judgment for dissolution was entered and several post-dissolution pleadings were filed. In pertinent part, Mother filed a petition for rule to show cause as to why Father should not be held in indirect civil contempt for failing to comply with terms of the marital settlement agreement as memorialized in a court order. The trial court found Father to be in indirect civil contempt, and he was ordered to pay past-due child support, past-due health care expenses, past-due activity charges and portions of college expenses. The trial court indicated that the purge payments were to be set by separate order on a specified date. On said specified date, the contempt proceeding was continued. Father filed a motion to vacate the indirect civil contempt order, which was denied. Father then filed an emergency motion to vacate the same order, which was also denied. Father appealed.

On appeal, the court first noted that the trial court had found Father to be in indirect civil contempt; however, a contempt order is not final or appealable until the party in contempt has been sanctioned or committed. Here, the trial court held status hearings on the finding of contempt while Father’s appeal was pending. Therefore, the post-dissolution contempt proceeding was not final or appealable before Father filed his notice of appeal. As a result, the court dismissed Father’s appeal for lack of appellate jurisdiction.

*In re Marriage of Johnson*, 2018 WL 181700-U (Ill.App. 1 Dist.), Dec.21, 2018*

The parties were married and had one daughter. Father was granted an emergency order of protection, which was later extended then consolidated with a dissolution action. The dissolution action remains pending. Father filed a petition for temporary custody and child support. After a hearing, the trial court designated a family member as “permanent custodian” under Section 606.10 and continued the case for status on parenting time and child support. In response, Father filed an emergency motion to modify said order and to stay enforcement. The trial court modified the order to provide that it was final and appealable pursuant to Rule 304(b)(6) and denied Father’s request to stay enforcement. Father appealed.

On appeal, the court found the original order entered by the trial court to not be an order contemplated by Rule 304(b)(6); therefore, the court lacks jurisdiction over the appeal. The court further noted that the original order was neither a permanent determination of the allocation of parental responsibilities entered in the course of dissolution proceedings nor was it a modification

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of a custody judgment subsequent to entry of a judgment. The court also noted that the case was continued by the trial court for status.

_In re Marriage of Reidy_, 2018 WL 3649746 (Ill.App.1 Dist.), July 31, 2018 **

The parties were married for over 26 years. The parties’ dissolution case was pending for over two years when Husband filed a petition for legal separation. He also filed a complaint in the law division seeking millions of dollars in punitive and compensatory damages from Wife. The complaint alleged that Wife illegally transferred marital property into two trusts, one in her name and one in his name. The trust for Wife had significantly more assets and Husband alleged that the creation of these trusts reduced the marital estate and ultimately would give him a smaller property distribution and maintenance award. The petitions were filed less than two months prior to the start of the divorce trial. Husband filed a motion to consolidate the law division case with the divorce case. The motion was heard by the law division judge and the judge denied the motion. Husband filed a motion in the divorce case asking the court to stay the dissolution pending resolution for the law division case. The divorce judge denied the motion.

On appeal, Husband argued that the trial court erred in denying his motion to consolidate. However, the appellate court did not have jurisdiction, as the denial of the motion was a step in the procedural progression of the _law division_ case, in which the trial court had not yet rendered a final judgment. The motion did not seek relief with respect to the dissolution proceeding. Husband asked the court to transfer his law division case to the domestic relations case. The motion sought relief pertaining only to Husband’s law division claim.

The appellate court found that even assuming the court could characterize the denial of the motion as a procedural step in the dissolution case, there was no error in the court’s decision. Wife would have faced prejudice if the motion was drafted as this would have resulted in a substantial continuance on a case that was pending for two and a half years and was set for trial.

_In re Marriage of Severyns and Laura M. Dominiak_, 2018 WL 170858-U (Ill.App. 2 Dist.), Dec. 3, 2018*

Father was married, but separated from his Wife, when he and Dominiak commenced their relationship. A child was born as a result of said relationship. Father had three other children as a result of his marriage to Wife. Dominiak filed a complaint to determine parentage and support. One month later, Father filed for dissolution of his marriage. Next, Dominiak filed a motion to intervene as of right pursuant to section 2-408(a) of the Code of Civil Procedure, asserting that she should be allowed to intervene because both she and Wife were seeking support from the same stream of income. A hearing on Dominiak’s petition was held, and the trial court entered an order denying intervention, citing that the child support statute protects the rights of subsequent born children. The order did not contain a finding pursuant to Illinois Supreme Court Rule 302(a) that there was no just reason for delaying either enforcement or appeal or both. Dominiak filed a motion to reconsider, which was denied. She next filed a notice of appeal and Father filed a motion to dismiss same for lack of jurisdiction, which the court granted. Then, Dominiak filed in the trial court a motion for a finding pursuant to Rule 304(a). After a hearing, the trial court denied

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Dominiak’s motion for a 304(a) finding. To note: no transcript of said hearing appeared in the record on appeal. Dominiak filed a new notice of appeal, specifying three orders: 1) the order denying her motion to intervene; 2) the order denying her motion to reconsider; 3) Father and Wife’s judgment for dissolution of marriage.

On appeal, the court stated that even when viewing Dominiak’s notice of appeal liberally, it could not be said that the denial for a Rule 304(a) finding was a step in the procedural progression leading to any of the orders specified in her appeal. To note: the orders denying Dominiak’s motion to intervene and motion to reconsider preceded the order denying her motion for a Rule 304(a) finding. Accordingly, the court lacked jurisdiction to consider this claim of error. The court further held that Dominiak lacked standing to appeal the judgment of dissolution as she was not an original party to said dissolution proceeding, she was denied intervention by the trial court, and she was not a party when the judgment was entered.

*In re Marriage of Siakpere and Alexander, 2018 WL 171916-U (Ill.App.1 Dist.), Sept. 28, 2018*

The parties were married in 2002 and Husband filed a petition for dissolution of marriage in 2015. The circuit court entered a judgment, which included a finding that certain real estate parcels of land were marital property. Husband appealed.

On appeal, the court found that Husband failed to provide a sufficient record, as his claim is based on testimony from trial. However, the Husband did not provide a transcript or acceptable substitute. In the absence of a complete record on appeal, the court must presume that the court acted in conformity with the law and with a sufficient factual basis for its findings. Therefore, the court affirmed the trial court’s judgment.

**APPLICABILITY OF LAW**

*In re Marriage of Helfin, 2018 WL 170812-U (Ill.App. 4 Dist.), September 21, 2018*

In July 2013, a judgment of dissolution was entered. The parties had two children during the marriage. The judgment, in pertinent part, provided for equal custody and for the parties to evenly split medical and extracurricular expenses. Following the entry of the judgment, several motions were filed. The case “languished” in litigation for the following two years. In May 2017, the trial court conducted a hearing on the remaining motions, including Father’s motions for child support and non-minor support. Father argued that the trial court should apply the statute, as it was written to calculate the amount of support, rather than apply the amended statute, which was effective on July 1, 2017. Mother argued that the trial court should apply the amended version of the statute. The trial court found that the 2016 version of the child support statute applied to the case because the case had been submitted to the court before the July 1, 2017 effective date of the amendments. Mother appealed.

On appeal, Mother raised the applicability of the Act issue, among other issues. Specifically, Mother argued that the trial court should have applied the 2017 version of the Act when calculating child support because it issued its decision after the July 1, 2017 effective date, and the parties were permitted to submit evidence after the effective date. In response, Father argued that the motion to support was filed in 2016 and the change in circumstances that permitted the filing of said motion occurred well before 2016. The court found that the parties submitted all of their

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evidence in 2017, and while the parties were permitted to file response briefs thereafter, the briefs almost exclusively contained arguments. Therefore, the court found that the trial court did not err by applying the 2016 version of the Act.

To note, the court also addressed Mother's issues raised regarding: (1) 529 savings plans (holding that it was within the trial court's discretion to award Father administration of the minor child's 529 savings plan); (2) reimbursement of cell phone costs (holding that the trial court did not abuse its discretion in awarding cell phone expenses to Father where, although cell phone charges may not be traditionally thought of as school of extracurricular expenses, it was not an abuse of discretion to award reimbursement for the same); (3) reimbursement of medical and educational expenses (holding that Mother failed to show the trial court's judgment was against the manifest weight of the evidence and the order was proper); and (4) income tax dependency exemption (holding that the exemption was properly awarded to Father where the children resided with Father for the majority of the year in question for tax purposes).

ATTORNEY'S FEES

In re Marriage of Brandes, 2018 WL 6252875 (Ill.App. 2 Dist.), Nov. 27, 2018*

A judgment for dissolution of marriage was entered on Dec 2014. Several post-decree motions ensued, which resulted in Wife filing a petition for interim attorney's fees. Husband filed a motion to dismiss pursuant to section 2-615 of the Illinois Code of Civil Procedure, which was denied. The trial court ordered Husband to pay $5,000 to Wife's attorney as and for interim attorney's fees. Husband failed to pay the $5,000, and as such, Wife filed a petition for rule to show cause. The trial court found Husband in contempt, as he had not made any efforts to pay the $5,000. The trial court sentenced Husband to Kane County Jail, and Husband immediately paid the $5,000.

Husband appealed the trial court's award of interim attorney's fees and the denial of his 2-615 motion to dismiss. The appellate court affirmed the decision of the trial court. The appellate court stated that Wife's interim fee petition was accompanied by an affidavit providing information recounting Wife's attorney's fees, thus surviving the motion to dismiss. The appellate court found that the trial court did not abuse its discretion in awarding $5,000 in interim fees. The trial court was aware that Wife was defending against several motions, including a motion to terminate maintenance. The trial court also reviewed the parties' financial affidavits and found that Wife was clearly in the weaker financial position.

Kane v. Kane, 2018 WL 5629905 (Ill.App. 2 Dist.), Oct. 31, 2018**

This is the second appeal in this case. By way of background, during the first appeal, the former attorney for Husband appealed the award of the trial court when the court awarded only $12,500 of the $48,000 in fees pursuant to 750 ILCS 5/508(c). In that case, the appellate court affirmed the decision of the trial court.

As a result of the first appeal, Husband incurred $11,640 in attorney fees defending against his former attorney's appeal. Husband filed a petition for attorney fees pursuant to 508(a)(3) against the former attorney. The former attorney filed a motion to dismiss, alleging that he was not a party for purposes of 508(a). The trial court found that the former attorney was a party for purposes of

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the petition for fees for defending an appeal filed by Husband. In order to establish the attorney's financial ability to pay the fees, Husband initiated discovery against the former attorney, seeking information regarding living expenses, assets and liabilities. The former attorney reiterated his argument that he was not a party for purposes of 508(a) and declined to comply with the discovery requests. Husband filed a motion to compel, which was granted by the trial court. The former attorney filed a motion requesting that the circuit court hold him in "friendly contempt" for the explicit purpose of appealing the court's interlocutory discovery order. The motion was granted, and this appeal followed.

The only issue on review was whether an attorney who seeks fees from a former client pursuant to 508(c) of the Dissolution Act is a "party" under section 508(a). The court indicated that section 508(a) contemplates three distinct types of fee proceedings: (1) interim attorney fees and costs in accordance with section 501(c-1), (2) contribution to attorney fees and costs in accordance with section 503(j), and (3) fees and costs to counsel from a former client in accordance with section 508(c). Here, the court found that "we must determine whether a client which has incurred attorney fees defending against an appeal stemming from the third type of proceeding may use the second type of proceeding to seek attorney fees from his former counsel."

The court found that while an attorney might be a party to the extent that he or she asserts a claim under section 508(c), the attorney is not an "opposing party" for purposes of contribution under section 508(a). Under section 508(a), the spouses are the opposing parties in a dissolution action. Further, applying 503(j) would be illogical given that the factors on which an award of contribution must be based have no relevance between an attorney and former client. The factors include the value of property assigned to each spouse, the duration of the marriage, and the reasonable opportunity of each spouse for future acquisition of capital assets and income. Because the former attorney was not a party to the underlying dissolution action, the former Husband had no statutory right to seek fees from him under section 508(a) of the dissolution act.

In re Marriage of Nurczyk, 2018 WL 170647-U (Ill.App. 3 Dist.), Dec. 20, 2018*

A judgment was entered, which suspended Husband's maintenance obligation until he received a worker's compensation settlement in excess of a specified amount. Wife filed an amended petition to set maintenance, asserting that Husband had received said settlement and failed to pay her maintenance. The trial court found that Husband's obligation to pay maintenance had recommenced and ordered him to pay a substantial arrearage. Wife subsequently filed a motion to enter a garnishment order, asserting that, instead of paying maintenance, Husband withdrew a substantial amount of funds, leaving a joint savings account empty. Wife requested that the trial court enter said garnishment order to be served upon Husband's Social Security benefits and disability pension. As a result, the trial court entered an order awarding Wife 100% of Husband's Social Security benefits and disability pension until the judgment for maintenance arrearages was satisfied. Husband appealed, and the court reversed and remanded with directions to amend the garnishment order. On remand, Husband filed a petition for attorney's fees and costs incurred to prosecute his appeal and section 2-1401 motion, which the trial court denied. Husband appealed.

On appeal, the court first noted that the standard of review on a trial court's ruling on a party's request for attorney fees in a post-dissolution proceeding is for an abuse of discretion. The court stated that under the plain language of section 508(a)(3.1), a trial court is not required to award

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attorney fees for the prosecution of an appeal even if a party substantially prevailed. Instead, the trial court merely has the discretion to do so. In the present case, the court noted that no garnishment order would have been necessary but for Husband’s failure to fulfill his obligation to pay maintenance. The court further noted that due solely to Husband’s failure to fulfill his obligation, he incurred additional attorney fees and costs. Accordingly, the court found that the trial court did not abuse its discretion in denying Husband’s request for attorney fees.

See also ADMISSION OF EVIDENCE, In re Marriage Moderwell, 2018 WL 170210-U (Ill.App. 2 Dist.), Dec. 10, 2018*

See also MAINTENANCE, In re Marriage of Buhlig, 2018 WL 2111016 (Ill.App. 4 Dist.), May 7, 2018*

See also MAINTENANCE, In re Marriage of Chirila, 2018 WL 4520864 (Ill.App. 2 Dist.), September 19, 2018*

See also PROPERTY, In re Marriage of Tompkins, 2018 WL 2347147 (Ill.App. 1 Dist.), May 22, 2018**

See also REIMBURSED EXPENSES, In re Marriage of Brown, 2018 WL 6741425 (Ill.App.1 Dist.), Dec. 21, 2018*

See also RELOCATION, In re Marriage of Fermin L. v. Megan S., 2018 WL 172873-U (Ill.App. 1 Dist.), September 20, 2018*

BUSINESS VALUATION

See also MAINTENANCE, In re Marriage of Preston, 2018 WL 3699722 (Ill.App. 2 Dist.), Aug. 1, 2018*

CHILD-RELATED EXPENSES

In re Marriage of Leimbach, 2018 WL 5310682 (Ill.App.3 Dist.), Oct. 25, 2018*

A judgment for dissolution of marriage and marital settlement agreement was entered in 1995. The parties had two children. The judgment addressed payment of uncovered medical expenses but did not address the issue of post-high school educational expenses. In 2009, Wife filed a petition for contribution to post-high school educational expenses on behalf of the parties’ oldest daughter, as she would soon be attending college. In 2010, after hearing, the trial court ordered Husband to pay $5,000 towards the post-high school educational expenses for the prior school year, as well as 100% of the post-high school educational expenses for the current school year. Also, in 2010, Wife filed a petition for rule to show cause for Husband’s nonpayment of uncovered medical expenses. Husband was ordered to pay $100 per month until same were paid in full. In 2016, Wife filed a petition for rule to show cause to hold Husband in indirect civil contempt for failure to pay the court-ordered educational and medical expenses. The trial court entered a judgment against Husband for the full amounts owed.

Husband appealed, arguing that he had insufficient funds to pay the post-high school educational expenses and that Wife’s claims were barred by laches. The appellate court affirmed the ruling of the trial court. Husband never made an argument that he had an inability to pay the amounts owed.

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ordered by the trial court. Further, Husband did not show that he was prejudiced by Wife’s delay in enforcement of the court order.

**CHILD SUPPORT**

*In re Marriage of Benink*, 2018 WL 672107 (Ill.App. 2 Dist.), Feb. 2, 2018**

The parties were married for 19 years and had four children together. Husband was the vice president and chief medical officer of a hospital. Wife was not employed outside the home during the marriage and was awarded child support upon the dissolution of the parties’ marriage. Two years later, the parties’ oldest child emancipated, and Husband obtained new employment, where he earned more income and received a signing bonus to cover his moving costs. Wife filed a motion for a modification of child support and for a finding of contempt against Husband for failing to pay her a portion of his bonus. For reasons unclear to the appellate court, the hearing was not conducted on the issues for three years. The court determined that the new child support statute would apply because the pleading addressed issues for which no judgement had yet been entered. The court performed what it called a “look back” to determine what Husband owed each year based on his early income. The court further decided that it would only modify the support owed for that year if there was a 20% change in Husband’s income. The court found that Husband owed Wife $146,435.46 in past due child support and did not address the signing bonus that Husband received. Husband appealed, and Wife cross appealed.

On appeal, the court vacated the child support calculations, finding that the trial court committed two legal errors. First, the 20% threshold for the modification of child support did not apply in this case because neither party received support services under the Illinois Public Aid Code, as required by the statute. Second, the court could have used the 20% change in income to determine whether there had been a substantial change in circumstances, but then, once it determined same, should have applied the statute to calculate the child support owed. Therefore, the court vacated the trial court’s calculation and conducted its own calculation of the amount owed, as the record contained the requisite income information.

*In re Marriage of Bergschneider*, 2018 WL 1162604 (Ill. App. 2 Dist.), March 2, 2018*

The parties were married in 1993 and had four children. In 2003, Wife filed a petition for dissolution of marriage. In 2004, the parties’ marriage was dissolved, and the trial court approved the parties’ marital settlement agreement and joint parenting agreement. There was a provision in the marital settlement agreement providing that Husband would pay forty percent (40%) of the net of any bonuses in addition to child support. Post decree, Wife filed a contempt petition against Husband seeking additional child support based on Husband’s bonus income. Husband petitioned for contribution to college expenses and moved to modify child support. The trial court found Husband in indirect civil contempt for failing to pay child support on his bonuses during 2012, 2013 and 2014, and ordered him to pay Wife $184,541.00 after apportioning credits for Wife’s contributions to college expenses. The trial court disagreed that the term “annual bonus” in the marital settlement agreement meant only a payment labeled as a bonus. The trial court included the stock, stock dividend, miscellaneous and bonus components of Husband’s income in its calculations, finding that all were the result of Husband’s work and effort through his employment. The trial court credited Husband for what Wife would have paid towards college

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had she been receiving the bonus support due to her and deducted same from the back due child support owed to her.

In 2016, the parties moved to reconsider, and Husband further petitioned to deviate from statutory guidelines for child support. In November 2016, the court denied the parties’ motions as they related to child support but reconsidered and modified its prior ruling as to college contribution. Husband appealed, arguing that the trial court erred in interpreting the parties’ marital settlement agreement concerning bonus child support for the years 2013 and 2014. Wife cross-appealed, arguing that the trial court erred in failing to consider Husband’s bonus income for the years 2009, 2010 and 2011.

The appellate court affirmed in part and reversed in part and the cause was remanded. The appellate court found that the trial court did not err in assessing Husband’s bonus child support obligation for the years 2013 and 2014. The appellate court did find that the bonus provision in the marital settlement agreement was ambiguous, and thus sought to give effect to the parties’ intent. When contract terms are ambiguous, they must be given their plain and ordinary meaning. The appellate court found that a reasonable interpretation of the evidence is that the bonus child support provision was intended to include all compensation Husband received. With regards to Wife’s cross-appeal in respect to 2009 and 2010, the trial court noted that the evidence concerning those years was not clear and that it could not reconcile Husband’s testimony concerning his base salary with his reported Medicare wages. As such, the appellate court could not conclude that the trial court’s findings were unreasonable. The appellate court also stated that to the extent Wife sought a remand for the re-opening of proofs, the request was forfeited for failure to raise it before the trial court. Regarding 2011, Wife argued that Husband received shares of cash, but did not sell the shares. The receipt of shares was a taxable event, and Husband received the cash portion to offset the taxable event. The appellate court agreed that the trial court’s treatment of this cash in 2011 was inconsistent with its treatment of the subsequent vesting events in 2013, where it included the cash portion as part of Husband’s bonus calculation. The appellate court remanded this issue for the trial court to incorporate the 2011 amount into its calculation of Husband’s obligation.

_In re Marriage of Cameron, 2018 WL 6719725 (Ill.App. 3 Dist.), Dec. 19, 2018*

The parties were married in 1998 and had four children. In March 2001, the trial court entered a judgment for dissolution of marriage and marital settlement agreement, wherein Husband was to pay directly to Wife $1,000 per month for child support. There was no mention in the judgment regarding payment for the children’s extracurricular activities. In February 2012, Wife requested the State’s Attorney assist in collecting Husband’s child support arrears. In March 2012, Wife filed a motion to determine the child support arrearage. In February 2013, the trial court ordered, by agreement of the parties, that Husband’s child support obligation be reduced, retroactively as of May 2012, to $958 per month. The trial court also ordered child support be paid through the State Disbursement Unit (SDU). In 2015, the trial court conducted a hearing on the child support arrearage, as the parties could not agree on the sum of money Husband paid to Wife prior to child support being paid through the SDU. Wife claimed Husband should be credited for no more than $49,929.50 in direct payments and Husband claimed he paid $69,318.67 to Wife based on his bank statements. Husband’s figure likely included payments to Wife for other child-related expenses. At the hearing in 2015, the trial court declined to rule on whether Wife could later seek

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interest on the arrearage amount. In 2017, the trial court issued an order and calculated the arrearage amount at $20,819.57. The trial court credited Husband for certain sums for extracurricular activities. The trial court denied Wife’s subsequent request for an identification of the specific credits.

Wife filed an appeal, arguing the trial court arbitrarily fixed the arrearage and failed to calculate and award statutory interest on the arrearage. The appellate court affirmed in part and reversed in part. The appellate court reviewed the record, which revealed that when Wife requested a specificity as to the allowed credits the trial judge referenced his personal notes. The appellate court found that neither this, nor the trial court declining to make a check-by-check finding of fact over the last 14 years, rises to the threshold necessary for an abuse of discretion. Further, the appellate court noted that the specific amount was detailed down to the last penny, and it did not appear as though the trial court arbitrarily picked a number out of thin air. The appellate court found that the trial court did commit error in not awarding interest on the unpaid child support, and that Wife was entitled to statutory prejudgment interest mandated by section 12-109 of the Code of Civil Procedure.

_In re Marriage of Fisher, 2018 WL 6582704 (Ill.App. 2 Dist.), Dec. 13, 2018**

Mother filed a petition to modify child support. In the marital settlement agreement, the parties agreed that Father would not be required to pay additional child support on any income he received in excess of $300,000. In the same agreement, the parties acknowledge that this was Father’s base income and that he may receive bonuses. The judgment for dissolution of marriage, which incorporated the marital settlement agreement, was silent as to child support. In her petition, Mother argued that the cap on the child support was contrary to public policy, particularly when section 505(a) of the IMDMA provided clear instructions on the guideline-deviation process. Mother argued that there had been a substantial change in circumstances in that Father was earning substantially more income and the expenses of the children had increased. Father filed a motion to dismiss, and the trial court granted the motion to dismiss, finding that there was no change in circumstances because the parties anticipated that Father’s income would be higher in the future.

On appeal, Mother argued that the trial court erred in finding that she failed to allege a substantial change in circumstances. The court found that the IMDMA was violated when the trial court that entered the judgment did so without specifically stating the reasons for the variance from the statutory child support guidelines. The judgment provided no specific reasons for the deviation when it placed a cap on Father’s income for child support purposes. The fact that the parties agreed in the marital settlement agreement that child support should be capped is not relevant. Even had the trial court made the required findings to deviate from the guidelines, Mother would not have been precluded from petitioning to modify child support based on changed circumstances. Therefore, the case was remanded to the trial court.

_Ford and Soltow, 2018 WL 6566758 (Ill.App. 2 Dist.), Dec. 10, 2018*

At the time of dissolution of marriage in 2010, the parties agreed to a deviation of child support. Said child support was based on the fact that Father had the children every other weekend, and every Monday and Wednesday until 7:30p.m. Also, Mother earned more than Father. The child support for three children represented 15% of Father’s net income. In 2011, an order was entered modifying Father’s child support to 20% of his net income. In 2014, an agreed order was entered

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extending Father’s parenting time to include an optional overnight on Sunday to Monday of his first parenting weekend of the month, and a mandatory overnight from Sunday to Monday on his second parenting weekend of the month. In 2016, Mother filed a petition to modify child support alleging a substantial change in circumstances. On October 3, 2017, the court found that there was no reason to deviate from the child support statute and that there had been a substantial change in circumstances.

On appeal, Father argued that there was no substantial change in circumstances. The court found that there was a substantial change in circumstances. Both Mother and Father were earning more and both parents testified that the children’s expenses had increased as the children got older.

Father next argued that the trial court abused its discretion in failing to deviate from the statutory child support guidelines. He argued that the court abused its discretion by not deviating based upon the amount of time he spent with the children. He argued that the previous orders allowing deviation should be followed. The court found that a prior child support order alone does not justify deviating from guidelines. The trial court may consider that a parent has extended visitation rights, but it is not required to deviate based on this factor. The court found no abuse of discretion.

Finally, Father argued that the trial court erred by not applying the shared physical care child support guidelines. Father argued that the trial court erred in finding that evenings that the children did not sleep at his house could not be counted as overnights, even though they ate dinner there. The court found that the clear and unambiguous meaning of “overnight” is that the child stays at the parent’s house for the night. The statute provides that the shared physical care child support guidelines apply if “each parent has 146 or more overnights per year with the child,” which did not occur in this case. Therefore, the trial court correctly determined that the shared physical care child support guidelines did not apply to this case and did not err in granting the mother’s petition to modify child support.

*In re Marriage of Haertling, 2018 WL 2811856 (Ill.App. 5 Dist.), June 7, 2018*

At the time of dissolution in May 2013, the parties had joint custody of the minor children. The judgment provided that no child support would be paid by either party because the parties were gainfully employed and earning similar incomes.

Wife filed for a motion for assessment of child support in January 2016, alleging that the children’s needs had grown, and that Husband’s income had increased. The trial court denied Wife’s motion, finding that Wife could not establish a substantial change in circumstances because the parties would be earning similar incomes if Wife was working full-time instead of part-time.

On appeal, the appellate court found that the trial court abused its discretion in denying the motion for child support. The trial court focused on Wife’s perceived underemployment in determining whether there was a substantial change in circumstances. The court found that the finding was against the manifest weight of the evidence. Wife, over time, had increased her hours and her income. Although the parenting schedule remained the same, the needs of the children had increased. Husband also obtained new employment, which substantially increased his income. His monthly income was higher than Wife’s monthly income. Therefore, the case was reversed and remanded.

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In re Marriage of Hefner and Kamieniak, 2018 WL 5781238 (Ill.App. 2 Dist.), Oct. 30, 2018*

The parties were married and had two minor children, both with special needs. In 2009, the parties entered into a marital settlement agreement wherein they agreed that Father would pay unallocated family support equal to 50% of his net income from all sources. In 2012, the trial court entered an agreed order terminating unallocated family support and setting Father’s child support obligation at 28% of his net income from all sources. In October 2016, Father filed a motion to modify child support alleging a substantial change in circumstances since the 2012 agreed order. Specifically, Father alleged that his income decreased, his income-tax liability increased, his employer reduced its contributions to his health insurance premiums, the needs of the children did not amount to what was represented, Mother’s income increased, and Mother had additional resources to contribute to the children’s expenses. To note: the trial court took judicial notice that the 2012 statutory criteria for child support was based upon a percentage of the payor’s income and that the payee’s income was not relevant to the determination of child support. The trial court denied Father’s motion to modify child support, and Father appealed.

On appeal, Father first argued that the trial court erred by failing to apply the IMDMA. The court found that the version of the Act applicable in the present case was the version in effect when Father filed his motion to modify child support. Next, the court found that the parties, in the 2012 agreed order, contemplated the possibility that Mother would become employed and earn an income. Therefore, the court found that the trial court properly refused to consider Mother’s earned income in determining whether a substantial change occurred. The court further affirmed that the trial court did not abuse its discretion in finding that Father failed to establish a substantial change in circumstances.

In re Marriage of Jonas, 2018 WL 4099710 (Ill.App. 1 Dist.), Aug. 24, 2018*

Wife filed a petition to modify child support based upon a substantial change in circumstances. Wife alleged that she had been unemployed and that she was temporarily disabled after breaking her foot. On January 17, 2017, the parties appeared in court with counsel. The court held a pretrial conference on that date and a court order was entered directing Husband to pay 28% of his net income for child support.

On appeal, Husband argued that the trial court failed to conduct an evidentiary hearing before modifying his child support obligation. The appellate court noted that a number of orders in this case were marked “agreed.” The January 17, 2017 order was not marked “agreed.” The appellate court found that the record was more than sufficient to establish that the factual and legal basis for granting Wife’s petition to modify the child support obligation was in fact disputed, and no agreement had been reached. Because there was no agreement, an evidentiary hearing was necessary prior to the determination of that petition. The decision of the trial court was reversed and remanded.

In re Marriage of Juris, 2018 WL 503238 (Ill.App. 1 Dist.), Jan. 22, 2018**

Husband earned approximately $49,000 annually and Wife earned $105,000 annually. The court entered a judgment for dissolution of marriage, awarding Husband permanent maintenance

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retroactive to November 2013, denying Wife’s request for retroactive child support and dividing the marital assets and debts. Wife appealed the child support and maintenance rulings and the value of her vehicle. On appeal, the court affirmed the judgment in its entirety. The court affirmed the denial of retroactive child support, finding that Wife’s financial affidavit was severely discredited and that she unilaterally liquidated about $113,000 from a marital retirement account to pay for household and children’s expenses during the divorce proceedings. The court next affirmed the retroactive maintenance award to Husband. The court was not persuaded by Wife’s argument that he forfeited this right due to his cohabitation with another person, as this took place after the period for which the maintenance applied. Finally, the court upheld the court’s evaluation of the vehicle, since Wife presented no evidence other than her opinion.

_In re Marriage of Key, 2018 WL 2179334 (III.App. 5 Dist.), May 10, 2018*

A judgment for dissolution of marriage was entered in December 1998. Wife was awarded custody of the parties’ 18-month old daughter, and Husband was to pay $700 per month in child support. In 2000, Husband filed a petition to modify, stating that he was no longer an Army Reserve member, and that he was indefinitely suspended from the Illinois State Police. In 2003, a default child support order was entered, requiring Husband to pay $400 based upon the reasonable needs of the child as his income could not be determined. In 2005, the parties entered into an agreed order after Husband paid all arrearages. Later in 2005, Husband filed a second petition to modify the 2003 child support order, alleging a substantial change in circumstances since he now had $130,000 in law school debt. In 2006, Husband filed a motion to dismiss his petition to modify support, which was entered. Later in 2006, Wife filed a petition to modify child support, stating the child’s needs increased. In 2010, the parties entered an agreed order allowing Wife to move with the child to Georgia. In 2013, Wife filed a motion to hold Husband in contempt for failure to pay his one-half share of the child’s health expenses. The trial court found that Husband was responsible for $900 in monthly child support payments for 68 months, or $61,200. The trial court found that since Wife didn’t pursue her petition to modify from 2009-2012, that she was not entitled to additional support for those months. The trial court subtracted the amounts of support Husband did pay during those 68 months and entered a Judgment against Husband in the amount of $23,960.

Husband filed an appeal, arguing that the trial court should not have considered Wife’s 2006 petition to modify, and that the 2010 order allowing Wife to move to Georgia dispensed of same. The appellate court found that Wife did not abandon her 2006 petition to modify and affirmed the ruling of the trial court. The appellate court found that the 2010 agreed order allowing Wife to relocate contained no reference to the issue of child support. The trial court did not abuse its discretion in awarding Wife retroactive child support.

_In re Marriage of Milenkovich, 2018 WL 2106162 (III.App. 1 Dist.), May 4, 2018*

The parties were married in 1993 and had three children. A judgment for dissolution of marriage and incorporated marital settlement agreement and joint parenting agreement were entered in 2012. The parties had joint custody of the three children and Wife was designated as the primary residential parent. Husband had parenting time with the children every other weekend and two evenings per week. Wife was a physician and Husband was an attorney. Husband was to pay

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Wife $2,841 per month in child support, which was 32% of his net income, and $750 per month towards the children's expenses. Husband was to also pay Wife 32% of any bonuses. In 2015, Wife filed a motion to modify the child support payments, stating the children's needs had increased. The trial court issued a ruling finding that both parties' incomes had increased, but that Husband's had increased substantially. Thirty-two percent of Husband's net income would be $7,872 per month. The court found that a deviation from guidelines was appropriate, as otherwise it would be a windfall to Wife due to her own high income. Husband was ordered to pay 20% of his net income, 20% of any bonuses and $750 per month towards the children's expenses. In 2016, Wife filed a motion to clarify. Later in 2016, the trial court issued an order that "bonus" meant any additional compensation awarded to an employee, and that additional income Husband earned from bringing in new business over his nonrecourse draw of $425,000 is not a bonus.

Wife filed an appeal, arguing that the trial court erred in deviating below the statutory guidelines. The appellate court found no abuse of discretion in the downward deviation. The children had maintained the same standard of living. The appellate court reversed the order denying Wife's motion to reconsider contribution to the children's expenses, as the trial court had discretion to order Husband to pay Wife an increased portion. The trial court considered the tuition expenses but did not consider the remaining monthly expenses. The issue was remanded for the trial court to consider whether, and in what amount, Husband's contribution to the children's expenses should be increased.

In re Marriage of Morgan, 2018 WL 298302 (Ill.App. 3 Dist.), Jan. 3, 2018*

The parties had three children as a result of their marriage. The parties' marital settlement agreement provided that during the weeks that Husband received unemployment compensation, he was obligated to pay 32% of that income to Wife as child support. However, because Husband was neither employed nor receiving unemployment compensation at the time of the divorce, the court did not set child support. The following year, Wife filed a motion to set child support, alleging that Husband was employed or was otherwise receiving income. Husband responded by denying he was employed but admitting that he was receiving unemployment compensation. Husband stated that upon receipt of his first payment, his attorney notified Wife's counsel and he voluntarily began paying Wife $167 per week for child support. Husband requested that child support be set at 32% of his income. At the hearing on the matter, Husband informed the court that he had found employment and requested that child support be set at 32% of his income. Eight months later, Wife brought forth the issue of retroactive child support. Husband argued that Wife was not entitled to retroactive child support dating back to the date that she filed the petition, arguing that he had been voluntarily paying Wife child support before he was ordered to do so and because the court never ordered that child support consider his average income. The court ordered Husband to pay Wife $3,300 for retroactive support and Husband appealed. On appeal, Husband argued that he should not be required to pay Wife retroactive support because Wife never filed a motion to modify child support. The court thus considered whether it was necessary for Wife to file a motion to modify child support to award retroactive support to Wife. The court agreed with Husband, finding that the retroactive support order was made in error, as the court does not have the authority to order a party to pay retroactive child support if a motion to modify child support was never filed. Therefore, the court vacated the trial court's judgment.

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In re Marriage of Nurceski, 2018 WL 6656905 (III.App. 4 Dist.), Dec. 14, 2018*

A judgment for dissolution of marriage and marital settlement agreement were entered on January 27, 2014, wherein Husband was to pay Wife 32% of his net income as and for child support for the parties’ three minor children. In 2017, Husband filed a motion to modify child support, alleging a substantial change in circumstances as the oldest child was about to emancipate. In response, Wife filed a petition to modify child support, alleging that Husband’s income had increased and the cost of living had increased since the entry of the judgment. At the hearing in the matter, Husband testified that he worked at two restaurants his father owned, and that he lived in a house his father bought for him. Husband testified that at times, his father would pay his living expenses and that his father would provide him additional money if he needed. The trial court found that a substantial change in circumstances occurred due to the oldest child’s emancipation. The trial court did not find Husband’s testimony regarding his work hours and income to be credible and imputed the monies Husband’s father gave to him as income for calculation of child support purposes. The trial court modified Husband’s child support based on the child support calculations provided by Wife, which were pursuant to the income shares model in section 505 of the Illinois Marriage and Dissolution of Marriage Act that took effect on July 1, 2017.

Husband filed an appeal, arguing that the trial court erred in applying the amended version of the child support guidelines, and improperly imputed income to him and therefore the child support amount was not correct. The appellate court affirmed the decision of the trial court. The appellate court found that Husband failed to raise the argument in the trial court regarding the calculation of support based on the income shares model, and therefore Husband forfeited that argument. The appellate court found that the trial court correctly imputed income to Husband based on the monies or “gifts” he received from his father. Husband did not admit any evidence that the monies received from his father were loans. The appellate court also found that the trial properly calculated child support in adherence to statutory guidelines.

Plowman v. Lawson, 2018 WL 3062373 (III.App 4 Dist.), June 19, 2018*

A few years after the parties were divorced, they agreed to change custody from Mother to Father. Child support was reserved because Mother was a full-time student. Once she became employed, Father filed a petition to set child support. During the discovery process, it was learned that Mother had received a personal injury award. Father asked that the court include the entirety of the net income for purposes of setting child support. The trial court found that only the portion, if any, of Wife’s personal injury award that was attributable to lost earnings would be considered for child support purposes.

On appeal, the court found that damages amount to a financial benefit of the receiving parent that has a positive impact on the parent’s ability to support his or her children. Therefore, the net proceeds from a personal injury settlement attributable to damages for pain and suffering and disability is income for child support purposes.

Rivera v. Gonzalez, 2018 WL 2746621 (III.App. 1 Dist.), June 5, 2018*

Father appealed from orders directing him to pay child support to fund college expenses for his daughter. The appeal was dismissed for lack of jurisdiction.

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On October 6, 2015, the court ordered Father to pay $30 per week as and for college contribution. The case was set for August 10, 2016 for status. Mother filed a motion in that time period as the Father was not making the payments as ordered. On August 1, 2016, the court entered a continuance order on Mother’s petition.

Father filed an appeal for the judgments entered on October 6, 2015 and August 1, 2016. On review, the appellate court found that the October 6, 2015 order was a final judgment. The court found that the presence of language retaining jurisdiction for purposes of enforcement does not necessarily render an otherwise final and appealable order non-final. Father did not file an appeal within 30 days of entry of that court order. Second, the appellate court found that after reviewing the August 1, 2016 continuance order, the court found it lacked jurisdiction because it was an interlocutory order and is not appealable pursuant to Supreme Court Rule 306 or 307, which permits appeals from interlocutory orders as continuance orders are not appealable.

*In re Marriage of Rushing, 2018 WL 6274202 (Ill.App. 5 Dist.), Nov. 30, 2018**

The trial court entered a judgment for dissolution of marriage on May 19, 2009, awarded sole custody of the parties' two minor children to Mother and ordered Father to pay $112 per week in child support. In 2010, Father's attorney entered an order terminating the income withholding order and Father's child support obligation. Mother admitted she agreed to the termination of child support at the time. In 2015, Mother filed a petition to modify child support for the one remaining minor child. Father had since remarried and had started a business. Father alleged his business was operating at a loss. The trial court ruled the income of Father's current spouse was relevant to the determination of child support and ordered Father to turn over a nonredacted joint tax return. Father filed a motion to reconsider, which was denied. Father then filed a motion to certify the question whether a court may consider the income of a current spouse, which was also denied. Father filed a second motion to consider and reopen proofs, attaching an updated financial affidavit and stating he had separated from his current Wife. The trial court denied the second request to reconsider but granted the request to reopen proofs. The trial court found that Father and his current Wife pooled their resources such that Father was able to benefit off current Wife's income while earning his own minimal income and not paying child support. The trial court stated that a legal separation meant a physical and legal separation. The trial court entered an order requiring Father to pay 20% of the combined income with his current Wife at $467 per month and pay $100 towards arrears. The trial court ruled that if Father and his current Wife no longer resided together in the future, then Father's child support would be reduced to 20% of Father's income alone, or $170 per month.

Father appealed, arguing that it was improper for the trial court to consider his current Wife's income while calculating child support. The appellate court affirmed the decision of the child support calculation that included current Wife's income. The appellate court stated that it is appropriate to consider the financial resources of a noncustodial Father's new Wife where resources have been comingled. The separate income of a spouse can be relevant to the extent that the souse's income frees up the parent's income so the parent and pay more of his or her own income for the support of the child. The appellate court found that the trial court did abuse its discretion when it made findings regarding the amount of child support to be paid in the future depending on whether a court determined Father and current Wife had legally separated. The appellate court found that by doing so, the trial court had reduced child support in the future.

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without affording Wife the opportunity to be heard. As such, the appellate court vacated the trial court’s order reducing child support should a legal separation be found to have occurred.

*In re S.D.M.*, 2018 WL 5911548 (Ill.App. 2 Dist.), Nov. 9, 2018*

After trial, the court awarded Mother $14,000 per month in child support. Father was a professional basketball player for 16 years before retiring. He testified that his net worth was $65,469,040, and that his monthly net income was $90,000 per month. Mother earned approximately $20,000 per year. The parties were under the old statute, and under those guidelines, Father would have paid $18,000 per month. The trial court concluded that child support of $14,000 per month would meet the needs of the child.

On appeal, Father argued that the court erred when it awarded $14,000 per month in child support and argued that there should have been a further deviation based upon the needs of the child. The court found that when dealing with a party who has a high income, the trial court must balance the concerns that (1) a child support award should not be a windfall and (2) the standard of living that the child would have enjoyed had the parents remained together. The court concluded that from all the evidence at the hearing that a support award of $14,000 per month was affordable for Father given his vast wealth, and that the award was in the best interest of the child as it was consistent with his needs and lifestyle he would have enjoyed had his parents remained together.

*In re Marriage of Schroeter and Lindsay, 2018 WL 4760479 (Ill.App.1 Dist.), Sept. 28, 2018*

The parties were divorced in 2008 and had four children. In 2015, Wife filed a petition for modification of child support. The trial court heard evidence of Husband’s income and claimed medical expenses and found Husband was not a credible witness. Husband had liver disease and received a transplant. From 2012 through 2016 Husband received $719,548 from his mother and stepfather. The trial court found that it could not determine Husband’s accurate net income and awarded Wife an increase in child support based on what the trial court deemed to be reasonable. The trial court also awarded retroactive child support and included in the court order that the fact that a child emancipated shall not constitute a substantial change in circumstances in the event of a future petition to modify child support.

Husband appealed, arguing that the trial court abused its discretion for setting child support without calculating his income and his necessary medical expenses, that the trial court failed to consider a minor child’s emancipation when setting child support, and that the trial court failed to use the July 1, 2017 income shares model in setting child support calculations. The appellate court affirmed in part, vacated in part, and remanded with instructions. The appellate court found that due to the incompleteness of the record, it was presumed that the trial court made its ruling with a sufficient factually basis and in conformity with the law. Therefore, the appellate court affirmed the trial courts child support calculations and finding that Husband’s income was difficult to ascertain. Regarding the method of the calculations, the appellate court found no error because the outcome of the case would not change whether the amount was set under the old or new statute since under both statutes the court is permitted to set reasonable child support when it is unable to determine the obligor’s income. The appellate court found that the trial court abused its discretion when it ordered Husband to pay an amount certain per month until the youngest child is emancipated and ruled that emancipation of a child is not a substantial change in

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circumstances to apply for an adjustment of the amount of child support. On remand, the trial court was directed to vacate the specific provisions of the order.

*In re Marriage of Verhines and Hickey*, 2018 WL 171034 (Ill.App. 2 Dist.), Nov. 20, 2018**

The parties had one child and were divorced in 2007. Pursuant to the parties’ judgment for dissolution of marriage, Father was to pay Mother child support according to a downward deviation based on Father’s yearly gross income. In 2015, Father petitioned for a reduction of child support under section 510 of the IMDMA because he was involuntarily terminated from his employment, effectively leading him into early retirement. Father’s assets at the time of his pleading included $2.585 million in broker accounts, $83,000 per year in deferred compensation lasting through 2017 and three homes (including a $775,000 vacation home). Father further had a demonstrated yearly travel budget of $60,000. Trial court granted Father’s petition, reducing the amount of monthly support. Mother filed a motion to reconsider based on her contention that the trial court did not consider Father’s largely tax-free withdrawal in the amount of $400,000 from a retirement account as income for the purposes of calculating child support. The trial court denied Mother’s motion to reconsider, and Mother subsequently appealed.

On appeal, the court noted that the present case was unique in that Father had “significant means” and chose to have a child later in life. Mother argued that Father failed to establish that substantial change in circumstances warranted a reduction of the child support amount. The court first addressed the Father’s retirement account withdrawal and found that the trial court erred by failing to require Father, who bore the burden of proof, to show why certain portions of said withdrawal were not section 505 income. The court further found that the trial court erred by failing to otherwise account for the withdrawal, stating that the court did not consider that the withdrawal had an impact on Father’s lifestyle in determining whether his circumstances had changed. The court found that the trial court based its substantial change determination “entirely” on Father’s change in employment status and reduced income and failed to consider all of the relevant factors of a substantial-change analysis. In the court’s analysis of said factors, it looked to maintenance cases for direction, as there was not case law regarding child support and withdrawal of funds from a retirement account when an obligor is retired and retirement age. Based on its review of the substantial change factors, the court found that the evidence did not support that Father suffered a substantial change in his financial resources that decreased his ability to satisfy the full support amount. The court found that “well-funded retirement accounts are meant to finance one’s life, and existing obligations are part of one’s life.” Father failed to prove that, based on his circumstances, that his financial position in retirement rendered him less able to pay the full support amount. Therefore, the trial court abused its discretion in modifying the support amount.


The parties were never married and had one child together. When the relationship ended, the court entered an order granting sole custody to Mother and requiring Father to contribute to expenses and pay $400 per month in child support. Father ceased paying court-ordered expenses in September 2014. At that time, he sought a reduction in expenses claiming he was only able to work part-time because he had to care for his parents. He also claimed that it was slow season for his business. In September 2015, Father ceased paying child support. He filed another motion alleging illness and slow business. A number of subsequent motions were filed, and eventually

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the court ordered Father to pay the arrearages for child support, day care expenses and medical expenses.

On appeal, Father argued the trial court erred in denying his motion to reconsider its denial of his motion to suspend child support and other expenses. He argued the trial court ignored his medical issues that affected his ability to work. The appellate court affirmed the decision of the lower court. The appellate court noted that the Father claimed he did not have money, but he and his wife took a two-week honeymoon to Hawaii. Father also argued that he could not work full-time because he took care of his parents. Yet, Father testified that his parents could provide daycare for the child as his justification for his failure to pay the child’s daycare expenses. Further, the court found that the medical records did not support his claims, except for a two-month period when the court temporarily suspended payments.

See also ADMISSION OF EVIDENCE, In re Marriage Moderwell, 2018 WL 170210-U (Ill.App. 2 Dist.), Dec. 10, 2018*

See also APPLICABILITY OF LAW, In re Marriage of Helfin, 2018 WL 170812-U (Ill.App. 4 Dist.), September 21, 2018*

See also ALLOCATION OF PARENTING TIME AND RESPONSIBILITIES, In re Marriage of Van Dorn, 2018 WL 180234-U (Ill.App. 5 Dist.), Nov. 30, 2018*

See also UNALLOCATED SUPPORT In re Marriage of Stranyiczki, 2018 WL 540277 (Ill.App. 2 Dist.), Jan. 23, 2018*

CIVIL UNION

In re Civil Union of Hamlin v. Vasconcellos, 2018 WL 1358867 (Ill. App. 2 Dist.), March 14, 2018*

In 2002, the women entered into a legal civil union in Vermont. In 2011, Petitioner filed to dissolve the civil union under the Illinois Religious Freedom Protection and Civil Union Act. The trial court entered a judgment dividing the parties’ civil union assets. Respondent appealed and Petitioner cross-appealed the trial court’s judgment. The dispute centered around the allocation of the company, Cignet. Respondent argued that because the Act was not effective until July 1, 2010, the accrual of civil union assets could not occur before that date, and therefore, the company had to be her non-civil union property. It was held that the Act operated prospectively, but applied to any legal civil union, even those predating the effective date of the Act. Petitioner argued that the trial court’s allocation of the company was an abuse of discretion because, despite the factual findings that the civil union represented a partnership, the trial court distributed the assets without regard to that partnership. The appellate court agreed and reversed the trial court’s judgment, ordering it to equitably reallocate the civil-union property. The case returned to the trial court, which changed the allocation of the company, awarding 80% to Respondent and 20% to Petitioner. Respondent again appealed, arguing that in light of Blumenthal v. Brewer, 2016 IL 118781, the court must revisit and change the interpretation of the Act.

The appellate court affirmed the rulings of the trial court. The appellate court found that the trial court’s equal distribution of liability accruing from property, division of the company, and award of attorney’s fees to the Petitioner was not an abuse of discretion. The appellate court rejected

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Respondent's request to reconsider the prior decision, as it was prohibited by the law-of-the-case doctrine. The appellate court declined to follow the Blumenthal case, as the parties in this case had entered into a civil union, whereas in Blumenthal the parties had not.

CODE OF CIVIL PROCEDURE

See also MOTION TO VACATE, In re Marriage of Majewski, 2018 WL 170233 (Ill.App. 5 Dist.), June 1, 2018*

See also PROPERTY, In re Marriage of Blomenkamp, 2018 WL 4678572 (Ill.App.5 Dist.), Sept. 26, 2018*

COHABITATION

Moore v. Moore, 2018 WL 5098860 (Ill.App.2 Dist.), Oct. 16, 2018*

During the dissolution proceeding, Husband was ordered to pay Wife $1,800 per month in maintenance. Husband filed a petition to terminate the maintenance alleging that Wife was cohabitating. The evidence revealed that Wife was in an on-again, off-again relationship. The boyfriend had asked Wife to marry him, but she declined. The parties lived in separate residences, but boyfriend was on two of her bank accounts. Despite the fact that he was on the accounts, he never used the accounts. The parties spent holidays together and vacationed together.

In this case, the court found that there was no de facto marriage. Boyfriend kept no personal belongings at Wife's house, and he only spent one or two nights per week at her house. While he was on her bank accounts, he did not deposit or withdraw any money. The court found that the fact that the couple spent holidays together does not mean that their relationship had obtained a level of permanence sufficient to terminate maintenance. Therefore, there was no de facto marriage.

COHABITATION

See also MAINTENANCE, Lederer v. Lederer, 2018 WL 4388409 (Ill.App.3 Dist.), September 13, 2018*

See also MAINTENANCE, In re Marriage of Swanson, 2018 WL 6118292 (Ill.App. 2 Dist.), Nov. 19, 2018*

See also MAINTENANCE, In re Marriage of VanHovelyn, 2018 WL 6040019 (Ill.App.4 Dist.), Nov. 16, 2018**

CONTEMPT

In re Marriage of O'Flaherty, 2018 WL 650474 (Ill.App. 1 Dist.), Jan. 30, 2018**

Husband and Wife entered into a marital settlement agreement (MSA), which was incorporated into a judgment for dissolution of marriage. The MSA awarded Wife $800,000, with the first installment of $400,000 to be paid within the first 60 days after the entry of the judgment. Husband failed to pay the first installment and Wife filed a petition for relief to show cause. Husband filed a motion to dismiss under 2-619, stating he could never be held in contempt because the $400,000

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and $800,000 provisions in the judgment “constituted a complete resolution of the issue” and therefore seeking enforcement by way of a contempt proceeding was barred by the doctrine of res judicata. The trial court denied Husband’s motion to dismiss, and found that Husband had the money to pay Wife, yet he chose not to pay her. The court also found that Husband’s failure to comply was willful and contumacious. The court issued a body attachment against Husband until he purged himself of contempt by posting $455,036 (the $400,000 plus 9% interest). Husband was incarcerated; however, he subsequently paid the $455,036 and was released. Husband filed an appeal to reverse the order denying his section 2-619 motion to dismiss, finding him in contempt, and attachment order.

The appellate court affirmed the decision of the trial court. The appellate court found that the doctrine of res judicata does not apply because the contempt proceeding was a continuation of the dissolution proceeding and there were no new lawsuits or new parties. The appellate court denied Husband’s election of remedies argument, as Husband failed to include all of the articles of the MSA in the record. The appellate court affirmed Husband’s conduct was willful and contumacious, as he had sufficient monies to pay Wife, elected to spend the monies elsewhere, and then misrepresented the facts to Wife. The appellate court found that given Husband’s imminent arrest for contempt, Section 502(e) of the Act empowered the trial court to temporarily suspend Husband’s parenting time until he was taken into custody.

See also MAINTENANCE, In re Marriage of Kesinger, 2018 WL 4773362 (Ill.App.4 Dist.), Sept. 28, 2018*

See also MODIFICATION OF JOINT CUSTODY JUDGMENT, In re Marriage of Pono, 2018 WL 3539836 (Ill.App. 1 Dist.), July 20, 2018**

DEBT

In re Marriage of Capelle, 2018 WL 180011 (Ill.App. 5 Dist.), June 21, 2018*

The parties were married in August 1991 and had four children, two of whom were minors at the time of the dissolution of the parties’ marriage in October 2017. Prior to the dissolution, in a March 2016 marriage-counseling session, Mother provided Father with a typewritten document consisting of 40 purported loans that Mother borrowed from her father for family expenses. According to the document, said loans were to be paid in full to Mother’s father. Father signed the document, later alleging that he signed as an attempt to save the parties’ marriage.

In September 2016, the parties commenced court-ordered mediation. The mediation resulted in an agreed-upon “2-2-3” parenting-time schedule. In November 2016, the circuit court entered an order awarding Mother temporary child support and maintenance and appointing a guardian ad litem (GAL). In April 2017, the GAL filed his report with the circuit court, citing that the parties’ only dispute was whether the existing “2-2-3” parenting-time schedule should be modified. Mother wished to change the days under the existing parenting-time schedule. The GAL recommended that the existing parenting-time schedule remain intact. At trial, GAL testified that his recommendation remained unchanged after hearing the parties’ testimony.

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On October 3, 2017, the circuit court entered an order dissolving the parties’ marriage, in which it adopted the GAL’s recommendation to keep the existing parenting-time schedule. In regard to the parties’ purported debt to the Mother’s father, the circuit court held that Mother’s document was not an enforceable contract. Further, the circuit court found that if the amounts had been received, those amounts were gifts from Mother’s father. Mother subsequently filed a post-trial motion, which was denied by the circuit court. Mother appealed.

On appeal, Mother alleged that the circuit court: 1) should have found the purported loans to be marital debts; 2) erroneously calculated her gross income; 3) should have deviated from the statutory guidelines for determining child support; 4) should not have ordered her to pay half of the minor children’s out-of-pocket medical expenses; 5) should not have awarded Husband any benefits under her retirement plan; and 6) should have modified the parenting-time schedule.

In its ruling, the appellate court first found that the Mother failed to rebut the presumption that the loans from her father were gifts and affirmed the circuit court’s judgment. Regarding Mother’s yearly gross income calculation, the appellate court found the circuit court’s estimate of yearly gross income to be reasonable and not against the manifest weight of the evidence where the circuit court averaged babysitting hours based on Mother’s testimony, then added Mother’s annual disability payments. The appellate court further found that Mother failed to rebut the presumption that Father was ordered to pay the correct amount of support, where Mother alleged the circuit court should have deviated from statutory guidelines because Father’s income was greater than hers and because she has custody of the minor children on certain days of the week. Next, the appellate court found that Mother’s claim that requiring her to pay half of the minor children’s out-of-pocket medical expenses was raised for the first time on appeal. Regardless of waiver, the appellate court further stated that the Mother’s claim that the expenses will cause an undue burden was conjecture. Regarding the circuit court’s award to Father the benefits under Mother’s pension plan, the appellate court found no abuse of discretion in equally dividing the IRAs and pension plan. Finally, the appellate court considered all of the relevant factors, including that the GAL’s recommendation and the fact that parties’ existing “2-2-3” parenting-time schedule had a proven track record of success. The appellate court affirmed the circuit court’s judgment that the GAL recommendations were in the minor children’s best interests.

DEFAULT JUDGMENT

In re Custody of D.M., 2018 WL 4761063 (Ill.App.1 Dist.), Sept. 28, 2018*

The parties were never married, but were the biological parents of D.M. In 2014, Father filed a petition to determine the existence of the father and child relationship and establish joint custody and visitation. Mother filed an answer and counter-petition, in which she sought sole custody. On November 1, 2017, the trial court granted a motion to withdraw filed by Mother’s attorneys. The trial court entered a written order that required her to file her pro se appearance, and that Mother must appear in court when the matter is heard for further status on November 27, 2017. Also, on November 1, 2017, Father filed an amended petition for sole allocation of parental responsibilities, child support and other relief. On November 2, 2017, Mother’s former attorneys mailed her the November 1, 2017 court order. Father’s amended petition was not included, but it

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was noted that if Mother did not appear in court on November 27, 2017 a default/dismissal may be entered against her.

Mother did not appear in court on November 27, 2017. That day, Father filed a certificate and motion for default, asserting there was personal service on Mother and that he gave her notice of his intent to proceed to a default prove-up hearing. The trial court entered a written order and set the matter for prove-up on December 28, 2017 and stated Mother must appear in court on that date. Neither Father’s motion nor the courts November 27, 2017 order mentioned the amended petition for sole allocation of parental responsibilities. Mother retained a new attorney, who appeared in court on December 28, 2017. Mother did not appear. That day, the trial court entered a written order stating that a default was entered against Mother and Father’s amended petition for sole allocation of parental responsibilities was granted. The trial court further stated that Mother was served with notice of the court date and she failed to appear. Mother filed a motion to vacate or reconsider the default judgment, which was denied.

Mother filed an appeal, arguing the trial court erred by entering a default judgment against her and maintained that Father did not notify her of the amended petition for sole allocation of parental responsibilities. The appellate court affirmed the ruling of the trial court. The appellate court noted that the record did not contain a transcript for the hearing on December 28, 2017, and without adequate record on appeal, it will be presumed that the order entered by the trial court was in conformity with the law and had a sufficient factual basis. Further, Mother was properly served with notice of all court dates.

**DISCOVERY SANCTIONS**

*In re Marriage of Hirschfield, 2018 WL 1281838 (Ill.App. 2 Dist.), March 12, 2018**

Husband and Wife were married in 1990 and had two children. A judgment for dissolution of marriage and marital settlement agreement were entered in 1998, wherein the parties agreed to each be equally responsible for the children’s graduate school, medical school and/or law school. Thereafter, one of the parties’ children was accepted into medical school. In September 2014, Husband filed a petition to modify his obligations to pay for medical school. In November 2014, Wife filed a motion to dismiss pursuant to section 2-619 of the Code of Civil Procedure. In January 2015, the court denied Wife’s motion to dismiss, finding that graduate expenses were an extension of child support and thus always subject to modification. In March 2015, Wife filed a motion to reconsider. Prior to a ruling, Husband filed a motion to compel Wife to comply with discovery. It was noted that Wife had earlier stated in open court that she would rather be held in contempt than voluntarily produce the documents. In October 2015, the court denied Wife’s motion to reconsider and gave her 28 days to respond to discovery. In November 2015, Wife was granted another 28 days to respond to discovery. In March 2016, Husband moved for discovery sanctions pursuant to 219(c) and asked that a default judgment be entered in his favor to release him from any obligation to contribute to medical school. In January 2017, the court entered a default judgment against Wife and granted Husband’s petition to modify the judgment, releasing him from any obligation to contribute to medical school.

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Wife filed an appeal. The appellate court vacated the default judgment entered by the trial court, stating that the default judgment was too severe of a sanction, was not issued as a last resort after other enforcement methods failed, and was not in proportion to the discovery violation. The case was remanded for further proceedings on Husband’s petition to modify his obligation to contribute to the cost of medical school.

DISSIPATION

In re Marriage of Arkin, 2018 WL 3374921 (Ill.App. 3 Dist.), July 9, 2018*

The parties were married on October 12, 2003 and had two children. On August 4, 2014, Husband filed a petition for dissolution of marriage. During the marriage, Wife was a homemaker and Husband was the CCO of Huckleberry Pie, Inc. and had a one-third interest in Arkin Family Associates, LLC. A temporary order regarding parenting time was entered. On October 13, 2015, Husband filed a petition seeking to end the parties’ exclusive possession of the marital home during their parenting time, as he was diagnosed with late-stage terminal brain cancer. In October 2015, the trial court granted Husband’s petition, and also ordered him to pay $1,000 per month in child support.

Throughout the course of litigation, Husband was found in contempt twice for failure to pay child support. Husband also began dissipating the parties’ assets, such as cashing in a $600,000 life insurance policy that named Wife and the children has beneficiaries; creating a revocable trust in which he attempted to deed an interest in the marital home and funnel other marital assets; transferring his ownership interest in Arkin Family Associates to his brother; dissolving Huckleberry Pie, Inc; and investing marital funds into the Rothschild Cornerstone Fund. Wife filed a notice of dissipation and petition for a 503(g) trust. The trial court closed proofs in August 2016. In September 2016, Husband filed a motion to reopen proofs, stating that his insurer would not cover certain medical expenses, and that $161,000 in medical expenses should be considered a marital debt. In October 2016, the trial court issued a judgment for dissolution of marriage. Husband’s testimony had been presented through his limited guardian. However, the trial court found Wife to be credible and did not find Husband to be credible. The trial court found Husband dissipated $1,042,940 in marital assets. The trial court found that a 503(g) trust should be imposed for the benefit of the children due to Husband’s history of non-payments and two findings of indirect civil contempt; Husband’s diagnosis of terminal brain cancer; and Husband had established himself as untrustworthy and not credible in matters relating to his personal finances. Husband’s medical bills were allocated solely to him. On November 23, 2016, Husband passed away.

Husband’s estate filed an appeal, arguing that the monies invested in Rothschild Cornerstone Funds were nonmarital; that Husband only received $450,000 from the sale of the life insurance policy; the trial court abused its discretion in imposing a 503(g) trust; and the trial court erred in allocating the $161,000 in medical debt solely to Husband. The appellate court affirmed the decision of the trial court. The monies Husband invested in Rothschild Cornerstone Fund sat in the parties’ joint checking account for months before the withdrawal. Husband did not present clear and convincing evidence to rebut the presumption that the monies received from Arkin Family Associates and then deposited into the joint checking account were not a gift to the marital

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estate. The finding of $600,000 in dissipation for the sale of the life insurance policy when only $450,000 was received was not in error. Wife and children would have received $600,000 in the event of Husband’s death. The trial court properly imposed a 503(g) trust, deeming it necessary to promote and protect the best interests of the children. The trial court also did not err in allocating the $161,000 in medical bills solely to Husband. Husband made all medical decisions without consulting, notifying or considering Wife.

_In re Marriage of Bolt, 2018 WL 3424414 (Ill.App. 4 Dist.), July 11, 2018*_

The parties were married 38 years and had two emancipated children. Husband had been employed as a supervisor in Decatur public schools and prior to that, he had been an auto-body work technician. His income was just under $75,000 a year and Wife earned around $25,000 a year. Husband had exclusive possession of the marital residence for four years, from the time Wife left to the time of the divorce hearing. At the time of the divorce hearing, property taxes were three years delinquent. The parties also had two rental properties: a single-family home and a commercial rental property. Husband collected rents on the single-family home from the time the parties separated thru the date of the divorce hearing, yet the property taxes on the rental home were also three years delinquent. As to the commercial property, Husband raised the total rent on the property from $800 a month to $1,750 a month to offset the temporary maintenance the court had ordered him to pay. Despite receiving all of the rent from the commercial property, the property taxes went unpaid. Husband testified he used the rental income from the commercial property to pay his truck payments maintenance and repairs to the marital residence, car and health insurance and support for the two children but provided no other evidence.

Husband worked on antique autos. He had purchased a car for $10,000 that was falling apart, spent 500-600 hours fixing it up and sold it for around $45,000. He argued that the court failed to consider that Wife did not contribute to the acquisition, preservation or increase in the value of the auto so therefore, the equal allocation of the proceeds was against the manifest weight of the evidence.

Appellate court found that “equitable” does not mean “equal” when it comes to debts. The analysis involves more than merely a review of dollars and cents. It also depends on the economic circumstances of the parties. The appellate court upheld the trial court decision that Husband should pay all of the delinquent property taxes: he had use of the rental income during the pendency of the proceedings and did not use it to pay property taxes, he earned three times what Wife earned, he had the exclusive use of the marital residence during the proceedings and he received various other assets of the marriage. Husband failed to show by clear and convincing evidence that the rental income he received was used for marital purposes, so the trial court decision was not against the manifest weight of the evidence.

As to the proceeds from the sale of the antique auto he restored, Husband argued that he received and spent those proceeds just prior to the Wife filing her petition for dissolution and he had no idea she was planning to divorce him. The court opined that the definition of dissipation does not provide that the dissipater must know that the marriage was undergoing an irreconcilable breakdown – just that “as a matter of objective fact, the marriage was undergoing an irreconcilable

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breakdown”. The evidence showed that the marriage was undergoing an irreconcilable breakdown before the Husband sold the auto and the proceeds were not used for purposes related to the marriage. Husband failed to show by clear and convincing evidence how the monies were spent. As to the equal allocation of the proceeds, the court finding was not against the weight of the evidence given that wife contributed to the marital enterprise by doing household tasks while she, like Husband, held down a full-time job.

The amount of maintenance set by the trial court was not in accordance with the statute and that amount was modified.

*In re Marriage of Denotto and Swift*, 2018 WL 6046755 (III. App. 2 Dist.), Nov. 16, 2018*

The parties were married and had one child. Wife appealed and Husband cross-appealed orders from the trial court 1) finding a judicial admission in Wife’s initial notice of intent to claim dissipation; 2) classifying real property owned by Husband’s business and non-marital property; 3) designating a LLC as marital property; and 4) awarding maintenance. Wife filed four notices of dissipation, with each pushing back the date of irretrievable breakdown. Wife based the changes on her claim of not knowing that Husband was having an affair. On appeal, the court found that the evidence demonstrated that the parties continued working on their marriage and that Wife was “neither naïve nor gullible” toward Husband’s affair. The court also considered whether Husband dissipated over $38,000 on adult websites. Husband contended that he paid for the adult websites using credit cards automatically paid through the LLC’s bank accounts. The court reversed and remanded, allowing Wife to present and prove up Husband’s “extracurricular expenditures” on gambling, drugs, strip clubs, partying and travel.

As for the real property classification, the court found that the trial court based its classification on a mistake of law (specifically, that Husband’s rights in the property derive from a purchase option in the lease agreement). However, the court found that it was not able to determine that the trial court’s statement that Husband purchased and maintained said business property using non-marital assets was a finding against the manifest weight of the evidence. Thus, the court vacated the order regarding business property and remanded to the trial court to make specific findings from evidence presented at trial. As for the LLCs, the affirmed the trial court’s classification as marital, as the LLCs were created after the marriage and Husband failed to overcome the presumption that the LLCs were marital.

Finally, the court found it to be premature to reexamine maintenance, as it remanded the case for Wife’s dissipation claims for Husband’s “extracurricular activities” and for the classification of business property, which potentially affects the income and property of each party.

*In re Marriage of Slezneva and Gavin*, 2018 WL 1358868 (III. App. 2 Dist.), March 14, 2018*

The parties began residing together in Russia in 1993, and a child was born in 1994. Also, in 1994, the parties’ emigrated to the United States, where a second child was born in 1996. The parties were married in 2000. Husband received a doctorate in biology in Russia. Wife had obtained degrees in biochemistry and medicine in Russia. Wife was a homemaker prior to 2001, when she returned to work. In 2013, a petition for dissolution of marriage was filed. In 2016,
following trial, a judgment for dissolution was entered that included a maintenance award for Wife and reserved maintenance for Husband until his 65th birthday. Wife filed a motion to reconsider, challenging Husband’s right to maintenance. In January 2017, the trial court granted Wife’s motion, and entered an order modifying the dissolution judgment to exclude maintenance for Husband.

Husband filed two notices of appeal, the first from the judgment of dissolution, and the second from the modified judgment for dissolution. The issues were as follows:

- **Reopen Proofs.** After the trial concluded, Wife moved to reopen the proofs based on new information acquired by subpoena regarding three undisclosed bank accounts of Husband’s. The trial court granted the motion, and, as a sanction for the “obvious nondisclosure”, precluded Husband from presenting evidence as to the use of the withdrawn funds. The appellate court found that this was not an abuse of the trial court’s discretion.

- **Modification of Judgment.** Husband argued that the trial court lacked jurisdiction to modify the judgment and excluding his maintenance. Wife argued that husband never requested maintenance, and if he had, her arguments at trial would have been different. The appellate court saw no error in the trial court’s modification of judgment to exclude maintenance to Husband.

- **Dissipation.** Husband argued that the trial court improperly allowed Wife’s dissipation claim to proceed even though it was filed untimely (one day before trial). It was found that Husband failed to produce information until after the 60 days prior to trial, making it impossible for Wife to file her dissipation claim any sooner. Further, the appellate court stated that the trial court is not required to list what conduct constituted dissipation or explain how it arrived at a certain dollar amount. The appellate court also deferred to the trial court’s findings as to the date the marriage was undergoing an irreconcilable breakdown, and stated it is not based from a date after which the marriage is irreconcilably broken.

- **Division of Marital Estate.** Husband argued that the trial court abused its discretion by not dividing the marital estate equally, as both parties contributed to the acquisition of the marital estate through their income. The appellate court found that the property was to be divided equitably rather than equally, and that the trial court’s ruling was not an abuse of discretion.

- **Maintenance Amount and Duration.** Husband argues that the trial court miscalculated the amount of maintenance to be awarded to Wife and erred in awarding her permanent maintenance. It was stated that the trial court properly applied the statutory guidelines but arrived at an incorrect maintenance amount due to a misstatement of Husband’s yearly income. The trial court deviated from guidelines in determining that maintenance to Wife should be permanent. The trial court did make a finding that because the parties were from Russia, it was unclear whether either would qualify for social security. The appellate court ruled that the trial court’s speculative “finding” regarding social security benefits insufficiently explained the order for permanent maintenance. The appellate court remanded the issues to the trial court with directions to recalculate the amount of maintenance, and for further findings with respect to the duration of same.

* Unpublished/Rule 23(e)(1) decision.

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See also PROPERTY, *In re Marriage of O’Connor*, 2018 WL 3968296 (Ill.App. 2 Dist.), Aug. 14, 2018**

See also PROPERTY, *In re Marriage of Basgall*, 2018 WL 724846 (Ill.App 2 Dist.), Feb. 2, 2018*

See also PROPERTY, *In re Marriage of Martz*, 2018 WL 931297 (Ill.App 2 Dist.), Feb 14, 2018

**DISTRIBUTION OF MARITAL ESTATE**

See also PROPERTY, *In re Marriage of Jones*, 2018 WL 1805299 (Ill.App 2 Dist.), April 13, 2018**

**DOMESTIC VIOLENCE ACT**

*Yazeji v. Assaf*, 2018 WL 4964342 (Ill.App.3 Dist.), Oct. 10, 2018*

In 2013, a petition for dissolution of marriage proceeding was filed. The parties had been living in separate residences, and a temporary parenting schedule was implemented wherein the parties exercised parenting time on alternating weeks. In 2017, Wife filed a petition for order of protection for herself and the parties’ four children. The allegations in the petition consisted of Husband strangling and hitting one of the children in the face, as well as throwing the child to the ground. Wife alleged that Husband harassed her by repeatedly showing up at public places where she was at and interfering with her parenting time. Husband was ordered to have supervised parenting time. A plenary hearing took place, and the trial court denied Wife’s petition for an order of protection on her own behalf. The trial court did not find by a preponderance of the evidence that Husband committed harassment against Wife. The trial court found that Husband had abused the parties’ son and entered a two-year plenary order of protection; however, Wife was to facilitate telephone calls.

Husband appealed the plenary order of protection against him. Wife appealed the denial of the petition for a protective order on her behalf against Husband. The appellate court affirmed the ruling of the trial court. The evidence was sufficient to support a finding of abuse by Husband towards the parties’ child. The trial court’s remedies were not unreasonable in ordering Wife to facilitate telephone communication. The trial court’s finding that Wife failed to carry her burden of proving harassment was not against the manifest weight of the evidence.

**EQUITABLE ESTOPPEL**

*In re Marriage of Hodges*, 2018 WL 1473521 (Ill.App. 5 Dist.), March 22, 2018**

The parties were married in 1995, and a judgment for dissolution of marriage was entered in 2004. The parties had two children, and Husband was to pay Wife $788.00 per month as and for child support pursuant to the judgment. In August 2006, the Illinois Department of Healthcare and Family Services, (HFS), filed a petition for adjudication of indirect civil contempt, alleging that Husband was in arrears in the amount of $9,483.60, of which $744.36 was interest. In November 2006, the assistant attorney general drafted a uniform order of support, which showed an arrearage of $8,400.00. The child support payment was indicated to be $330.00 and payment on the arrearage was set at $50.00, with payments to take place every other week. In December 2006, Wife filed a memorandum of lien against the real estate owned by Husband in the amount

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of $10,446.00. In 2008, Husband learned of the lien and increased the amount of his loan by $10,446.00 to release the lien. Wife admitted that sometime in 2008 she verbally agreed to accept Husband’s child support payments of $165.00 per week rather than the $788.00 per month originally ordered. Wife had spreadsheets from 2007, 2008, 2009 and 2010 indicating the weekly payments of $165.00 from Husband. In 2014, Wife again contacted HFS, and Husband was notified he owed $22,230.00 in child support. Husband denied he owed that much. In 2015, HFS notified Husband there was a lien on his home to enforce $17,583.11 in past-due child support. Husband appealed. Unbeknownst to both parties, the uniform order of support was never officially entered with the court by HFS in 2006. In January 2016, a hearing was conducted, and HFS informed Husband they could not enforce anything but the original written order requiring him to pay $788 per month in child support. In March 2016, Husband filed a petition for judicial review, as well as an amended petition to determine the arrearage arguing equitable estoppel applied.

The trial court found that equitable estoppel should apply to payments made from December 1, 2006 to September 30, 2014, in that the amount of support during that time should be $165.00 per week, or $715.00 per month; that Husband should pay child support in the amount of $788.00 per month from October 1, 2014 until May 31, 2017; and the arrearage as of March 31, 2017 was $5,770.79, which included the statutory 9% interest on any amount not paid when due. (Husband’s child support obligation ended in May 2017 when the parties’ youngest child emancipated.)

Wife filed an appeal, arguing that equitable estoppel did not apply and that an out-of-court agreement entered between the parties could not be enforceable. The appellate court affirmed the decision of the trial court. Equitable estoppel exists where a party, by his or her own statements or conduct, induces a second party to rely, to his or her detriment, on the statements or conduct of the first party. A finding that equitable estoppel applies must be based on clear and convincing evidence. The appellate court found that even though the uniform support order was never entered, both parties relied upon it. Wife used the $8,400.00 arrearage calculated for the uniform order of support in filing a lien against Husband’s real estate, and Husband satisfied the lien. Wife accepted the $165.00 per week as and for child support, and the several spreadsheets Wife made showing same were clear and convincing evidence the parties reached an agreement.

GUARDIAN AD LITEM

*In re Marriage of Irbleck,* 2018 WL 300528 (Ill.App. 2 Dist.), Jan. 4, 2018**

Wife filed a petition for dissolution of marriage. The parties had three minor children, and a guardian ad litem (GAL) was appointed. The GAL was discharged and reappointed throughout the proceedings; however, she continuously worked with the parties throughout the duration of the case. The GAL filed a petition for fees, and Husband filed a motion to adjudicate, contending the GAL should not receive fees for the periods between her discharge and reappointment. The trial court denied the motion to adjudicate.

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Husband appealed, contending that the court erred in denying his motion to adjudicate, and erred in allowing the GAL to retain fees for certain periods of time due to lack of a proper court appointment and that there were not any petitions relating to the children before the trial court. The appellate court affirmed the decision of the trial court. The appellate court denied Husband’s argument that there were no pending proceedings relating to the children. The appellate court stated that the proceeding was the original dissolution proceeding itself, which remained pending until the trial court entered the dissolution judgment. Further, the parties had continued to utilize the services of the GAL throughout the time periods contested.

*In re Marriage of Orloff*, 2018 WL 6753681 (Ill.App. 1 Dist.), Dec. 24, 2018*

In 2015, a guardian ad litem (GAL) was appointed in the parties’ dissolution of marriage proceeding. Both Father and Mother were ordered to pay a portion of the GAL’s fees. The GAL filed a disclosure of GAL fees and a request for approval and stated that Father had failed to pay. The trial court found the GAL’s fees to be reasonable and ordered a payment plan until Father paid the GAL in full. Father filed a motion to vacate the order, stating the GAL failed to file an invoice for his services every ninety (90) days as required by section 506(b) of the Illinois Marriage and Dissolution of Marriage Act IMDMA. The trial court denied the motion to vacate. The GAL moved for entry of memorandum of judgment, which was granted. In 2017, the GAL filed a petition for indirect civil contempt against Father for failure to pay. Father filed a motion to dismiss pursuant to section 2-619 of the Code of Civil Procedure, arguing the GAL lacking standing under section 511 of the IMDMA. In 2018, after a hearing, the trial court denied the motion to dismiss and found Father in indirect civil contempt.

Father filed an appeal, arguing that the GAL lacking standing to file a petition for contempt and that the GAL should have initiated a separate collection action. Father argued that section 511 of the IMDMA was only available to the parties and not a GAL. The appellate court affirmed the decision of the trial court. The appellate court found that pursuant to section 506 of the IMDMA, the court that appoints the GAL has the authority to award fees and costs. Further, the appellate court found that pursuant to section 508 of the IMDMA, the GAL had the right to pursue his fees directly in the ongoing dissolution proceeding.

*In re Marriage of Radke*, 2018 WL 2734863 (Ill.App. 4 Dist.), June 5, 2018*

During the dissolution proceeding, Husband filed a pro se motion to appoint a guardian ad litem (GAL). A GAL was appointed. Husband also filed a motion to accept his Exhibit B into evidence. The trial court refused to admit the exhibit. The court did not require the GAL to file a written report.

On appeal, Husband argued that the trial court erred in not requiring GAL to file a written report. The court found that Husband forfeited this issue as he cited no case law to support his position and only offered conclusory statements.

Husband next argued that the court erred in refusing to admit his exhibit B. This issue was also forfeited. Husband cited no case law and only offered conclusory statements. Husband also argued that the trial court erred in deciding facts concerning premarital and marital property and in the equal distribution of property. Husband argued that the parties land trust was funded solely by his premarital person property and money that he inherited. However, Husband failed to show

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documents tracing the inheritance money to the land trust or that the other source of the account was premarital money.

**IMPUTATION OF INCOME**

See also UNALLOCATED SUPPORT, *In re Marriage of Stranyczki*, 2018 WL 540277 (Ill.App. 2 Dist.), Jan. 23, 2018*

**INTERLOCUTORY APPEAL**

*In re Marriage of Milne*, 2018 WL 180091 (Ill.App. 2 Dist.), Aug. 2, 2018**

The parties were married in 2014 in Lake County, Illinois. Husband is a Canadian citizen and Wife is a United States citizen. The parties have two minor children, one of which is a child from Wife’s previous marriage but adopted by Husband. The parties relocated to Canada in August 2015 and were subsequently granted permanent residency there in February 2016.

While the parties were on a trip in Illinois in 2016, Wife petitioned for dissolution of marriage. Husband responded by petitioning the Northern District of Illinois to return the children to Canada. A consent order was issued in the federal case, stating in pertinent part that the minor children would return and reside in Canada until July 2018. Based on the consent order, Wife voluntarily dismissed her dissolution petition. In 2017, while Wife and the minor children were vacationing in Illinois, Wife again petitioned for dissolution of marriage. Husband was served in Canada and moved to strike and dismiss for lack of jurisdiction or forum non conveniens. The trial court found that Illinois had asserted jurisdiction pursuant to the UCCJEA and that the court had personal jurisdiction over the Husband. The trial court further ordered parenting time. Husband appealed. The appellate court affirmed the ruling of the trial court, stating that the consent order memorialized the parties’ shared intent that their Canadian residence was temporary. The appellate court further adopted a totality-of-the-circumstances approach when analyzing a temporary absence under the UCCJEA. The appellate court found that the trial court correctly placed the most significant weight on the consent order, which indicated the parties’ intent and the objective circumstances during the relative period. Regarding Husband’s allegation on appeal of a denial of due process, the appellate court found no error with the trial court’s order maintaining the status quo pending appeal.

**INTERVENE AS OF RIGHT**

See also APPEALS, *In re Marriage of Severyns and Laura M. Dominiak*, 2018 WL 170858-U (Ill.App. 2 Dist.), Dec. 3, 2018*

**JURISDICTION**

*Evans v. Amos*, 2018 WL 6740731 (Ill.App. 1 Dist.), Dec. 21, 2018*

In 1995, the parties were divorced in California and a custody order was entered regarding the minor child. In 1997, Mother and the minor child moved to Missouri, and the California order was registered in Missouri. In 1999, the Missouri court modified the child support amount. In 2016,

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the Illinois Department of Healthcare and Family Services (DHFS) filed a petition pursuant to the Uniform Interstate Family Support Act to register the Missouri order in Illinois for enforcement purposes, as the child had emancipated. Father filed his pro se appearance and answer. Thereafter, DHFS filed a petition for rule to show cause for Father’s nonpayment of the child support arrearage. Following a hearing in 2016, the Illinois trial court ordered Father to satisfy the Missouri child support order. The trial court found that it had jurisdiction over the parties due to Father’s appearance in court. In 2017, the trial court found Father in contempt for nonpayment of child support and set a purge. In the interim, in 2017, Father filed a motion for substitution of judge and argued the court lacked jurisdiction to register the Missouri child support order as he was an indigenous/Native American. Father also filed a motion to vacate/abate/strike/dismiss the contempt order based on lack of jurisdiction. The trial court denied the motion for substitution of judge and the motion challenging jurisdiction due to the fact Father had filed an answer and appearance.

Father filed an appeal. The appellate court affirmed the ruling of the trial court and found that Father’s jurisdictional challenge was precluded by his voluntary submission to the jurisdiction of the trial court.

Scott v. Ferreira, 2018 WL 5019194 (Ill.App.5 Dist.), Oct. 9, 2018*

The order granting Mother’s motion to dismiss was affirmed by the appellate court as the circuit court lacked jurisdiction over the proceedings.

Mother was a citizen of Brazil and Father was a U.S. citizen. Mother gave birth to the parties’ child in Brazil, but the child had a U.S. passport. Father paid for Mother, the parties’ son, and Mother’s son from another relationship to come to the U.S. Father alleges that there was no return ticket; however, Mother alleged that she had to ask leave of court to bring her other son, and there was a return ticket for six months out.

On January 10, 2018, Mother moved out of Father’s residence and into a domestic violence shelter. On January 11, 2018, Father filed a petition for allocation of parenting time. The next day, he filed a verified petition for temporary restraining order and preliminary and permanent injunctive relief, asking that Mother not be allowed to return to Brazil. Mother filed a motion to dismiss pursuant to the UCCJEA. The motion alleged that the child was born in Brazil in October 24, 2016 and on September 24, 2017, the child and Mother came to the U.S. on a six-month tourist visa. Ultimately, the trial court granted Mother’s motion.

The sole issue on appeal was whether the court erred in granting the motion to dismiss. The court found that because the Act requires a child to live in Illinois with a parent for six months prior to the filing of the petition, it was correctly determined that Illinois was not the home state of the child. There was no genuine issue of material fact.

In his appeal, Father alleged that the court should have addressed the issue of emergency temporary jurisdiction. However, Father waived the issue by not arguing it at the trial level. The circuit court still could not have exercised temporary emergency jurisdiction. The fact that Mother fled with the child to a domestic violence shelter rebuts the presumption of emotional distress. Further, Mother was not concealing the child as she was successfully served with the petitions at the shelter.

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LACHES

See also CHILD-RELATED EXPENSES, *In re Marriage of Leimbach*, 2018 WL 5310682 (Ill. App. 3 Dist.), Oct. 25, 2018*

LIFE INSURANCE

See also PROPERTY, *In re Marriage of Tompkins*, 2018 WL 2347147 (Ill App. 1 Dist.), May 22, 2018**

MAINTENANCE

*In re Marriage of Buhlig*, 2018 WL 2111016 (Ill.App. 4 Dist.), May 7, 2018*

The parties were married in 2005 and had three children. The marital residence had been in Husband’s family for over 150 years. In 2011, Wife filed a petition for dissolution of marriage. In 2012, the trial court entered an order establishing the grounds for dissolution of marriage and incorporating the parties’ mediation agreement. Later in 2012, the court entered a supplemental judgment allowing Wife to remain in the residence until she found employment or left. Wife’s right to live in the marital residence was subject to annual review. Maintenance to Wife was waived as long as she remained in the marital residence. In 2013, the court entered its dissolution judgment, which did not address maintenance, but did allow the Wife to live in the marital residence until she found employment or voluntarily left. Husband was to pay the bills while Wife lived there. In 2016, Husband filed a petition for review and modification and for an order to refinance and to terminate Wife’s maintenance. The trial court ordered Husband to pay Wife $612.02 per week in maintenance for 2.5 years. Wife was to vacate the residence by August 1, 2017. While she remained in the residence, she was to pay for one-half of the mortgage and utilities. Husband was to pay $4,620 towards Wife’s attorney’s fees.

Husband filed an appeal. The appellate court affirmed the decision of the trial court. The appellate court found that Husband’s position allowing Wife use of the marital residence and his payments related to her use was reviewable maintenance. The appellate court found that Wife did raise the issue of attorney’s fees in her response, and that contrary to Husband’s position that he was unaware of the issue, it was addressed in his own closing argument. As such, the appellate court found there was no abuse of discretion by the trial court.


The appellate court found that the trial court did not err by treating Husband’s lottery winnings as income and awarding former Wife a one-time lump sum maintenance payment plus increasing the monthly maintenance amount.

Husband won $700,000 from the lottery, $423,749 after taxes. Wife had COPD and had not been employed since 2009 and was drawing from her retirement. She filed a motion to increase her maintenance based on the winning; and Husband filed a motion to decrease his maintenance because he had lost his job and was now at a lesser paying job. After, the hearing, the court awarded Wife a lump sum maintenance payment in the amount of $123,125, and increased Husband’s maintenance obligation. The appellate court found that courts have held that an item treated as property for purpose of the distribution of marital property may be considered income

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after the judgment of dissolution has been finalized. Therefore, the lottery award could be considered income for the purpose of the modification.

During the appellate proceedings, Wife died. As this was a lump sum award, the court found that the money was to be paid to her estate.

*In re Marriage of Callaghan, 2018 WL 172915 (Ill.App. 1 Dist.), Dec. 18, 2018*

The parties were married for 31 years. At trial, Wife testified that she had Parkinson’s disease, high blood pressure, and anxiety. Wife was found to be able to currently support herself but may lose that ability at any time. Husband had significant retirement assets as a retired Chicago police officer. The trial court allocated all property and assets but reserved the issue of maintenance indefinitely. Husband appealed.

On appeal, the court initially stated that reservation of maintenance, while not the norm, has been repeatedly approved in dissolution proceedings. The court noted that the trial court indicated that it felt at the time that Wife had sufficient assets and resources, but that leaving the issue of maintenance open indefinitely followed naturally from Wife’s circumstances. The court further noted that said circumstances necessitated a thoughtful, flexible solution. Rather than ordering an amount in maintenance subject to review, the trial court was found to have appropriately recognized the nature of Wife’s illness and uncertain prognosis. The court further found that the reservation of maintenance was just and well within the trial court’s discretion.

*In re Marriage of Cantrill, 2018 WL 4507703 (Ill.App.3 Dist.), Sept. 18, 2018*

A judgment for dissolution of marriage was entered and Husband was ordered to pay maintenance in the amount of $1,650 per week based on his base income of $284,796. Husband filed a petition to modify alleging that he had lost his employment and had found a new job earning substantially less.

The evidence indicated that Husband had gotten into an argument with the sector president, and six weeks later, he was asked to resign or be fired. He was offered a severance package, and thereafter immediately began looking for employment. The court found that there was no indication that the argument led to his termination. Therefore, the trial court’s finding that Husband’s loss of employment was involuntary was not against the manifest weight of the evidence. Further, Husband actively sought reemployment and accepted the first job that he was offered.

*In re Marriage of Chirila, 2018 WL 4520864 (Ill.App. 2 Dist.), Sept. 19, 2018*

The parties were married in 1991 and had two children. In 2015, Wife filed a petition for dissolution of marriage. A trial took place in 2017. The court averaged the party’s incomes for the past five years and awarded maintenance to Husband. This provided for an approximate equalization of the parties’ gross income and took into account that Wife remained in the marital residence for the children that required an annual expenditure of $78,000. Husband was ordered to pay $10,000 towards Wife’s attorney’s fees due to causing unnecessary delay.

Wife filed a motion to reconsider. Wife argued that that trial court improperly awarded maintenance to Husband in excess of 40% of the combined gross income of the parties, and that

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the court improperly imputed income to her and improperly averaged the parties’ income. The trial court granted Wife’s motion to reconsider. The trial court stated that it erred in averaging the income of the parties, and that the trial court should have taken the actual income of the parties and used that in its maintenance calculation. The judgment was amended to reflect that both parties were barred from maintenance.

Husband filed an appeal, stating that the trial court erred in denying him maintenance and erred in ordering him to contribute $10,000 to Wife’s attorney’s fees. The appellate court found that the trial court abused its discretion in granting Wife’s motion to reconsider because the trial court incorrectly believed it erred in averaging the parties’ incomes over a five-year period. The trial court had no basis to alter its original findings. The appellate court found that the trial court abused its discretion in its original judgment in its weighing of Wife’s financial obligations as a result of the dissolution, in that it failed to account for the fact that Wife would have had measurable housing expenses even if the parties had not agreed that she would live in the marital residence. The appellate court reversed the trial court’s grant of Wife’s motion to reconsider and remanded for the trial court to reconsider maintenance in light of the appellate court’s determination that it did not properly weigh Wife’s housing expenses. The appellate court found that the trial court acted within its discretion in awarding attorney’s fees to Wife and affirmed the award.

In re Marriage of Cozadd, 2018 WL 6468333 (Ill.App. 5 Dist.), Dec. 7, 2018*

The trial court did not abuse its discretion in awarding maintenance to Wife, but the trial court’s maintenance calculation was incorrect.

This was the second time that this case has been appealed. During the first case, the trial court awarded maintenance to Wife in the amount of $2,000 per month for a period of two years. The judgment was vacated and the case was remanded back to the trial court with directions to enter specific findings regarding its maintenance decision in compliance with section 504 of the Act. The trial court reconsidered the maintenance issue. The trial court, after applying the statute, amended its earlier maintenance award and order Husband to pay Wife monthly maintenance of $546.30 for 6.6 years.

On appeal, Husband claimed that the trial court erred in the calculation of his income. Husband argued that his income was inflated because he listed a monthly bonus on his financial affidavit. However, he provided no proof that the bonus is discretionary. Further, he argued that he may not be able to continue in his capacity as an Air National Guard Reservist, and if he was unable to do so, this would affect his civilian job, thus causing him to earn less. The court found that it was proper for the trial court to not consider the possibility of the Husband no longer serving as a Reservist because maintenance awards must be based upon evidence disclosed in the record and at trial.

Further, Husband argued that the trial court was incorrect when it included the child support payments that he receives as income. The court found that it was appropriate to include the child support received as he used child-related expenses to offset his regular income in his financial affidavit. However, the court found that the trial court was incorrect when calculating the child support that the Husband actually received. Therefore, based on the miscalculation, the maintenance that he was ordered to pay was modified from $574 per month to $527.15 per month.

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In re Marriage of Fox, 2018 WL 1595437 (Ill.App 1 Dist.), March 23, 2018*

The trial court granted Husband’s motion to terminate maintenance to Wife as of January 1, 2016 and ordered Wife to reimburse Husband any sums of money received as maintenance after that date. Wife remarried two months after the entry of the judgment for dissolution of marriage. However, the marital settlement agreement specifically stated that the payments were non-modifiable and would terminate once the full payment of $12,000 was received by Wife. The appellate court found that the trial court erred when it terminated the maintenance payments prior to the full payment of the $12,000. The language of the marital settlement agreement clearly stated that the maintenance was non-modifiable and the only terminating factor was the payment of the entire $12,000. The appellate court found the language was unambiguous and therefore reversed and remanded the decision of the lower court.

In re Marriage of Halleran, 2018 WL 2287021 (Ill.App. 5 Dist.), May 17, 2018*

During the trial, Wife testified that she worked at a sawmill and earned $133 a day. Husband testified that he and his brother operated the sawmill as an informal partnership and that they were dissolving the partnership. He testified that he no longer worked at that sawmill and worked at miscellaneous part-time jobs. During the marriage, Husband had historically earned significantly more than Wife. After considering the statutory factors, the trial court held that “maintenance is not appropriate at this time.” Although the court declined to award maintenance, the court ordered Husband to produce quarterly income statements to Wife and the court and to annually send Wife copies of his tax returns. When asked how long he was to do this for, the court said, “Till hell freezes over. It just goes on.”

On appeal, Husband claim that the trial court reserving maintenance was in error, and that the court exceeded its authority by ordering him to indefinitely produce quarterly income reports and annual tax returns. Pursuant to Section 401(b) of the Code, the trial court has the ability to reserve maintenance by agreement of the parties or by motion of either party and by finding that the appropriate circumstances exist. Here, the court made a sua sponte decision to reserve maintenance. The record does not reveal either an agreement or a motion to reserve maintenance. The trial court is not precluded from reserving maintenance; however, the court must follow the plain language of Section 401(b). Therefore, the decision was reversed and remanded.

Hanko v. Hanko, 2018 WL 3374105 (Ill.App. 5 Dist.), July 9, 2018*

A judgment for dissolution of marriage was entered on October 26, 2010. In the agreement, the Husband agreed to pay Wife as maintenance “the total sum of $10,000 per month for 60 months.” After filing a motion, on January 26, 2011, an amended marital settlement agreement was entered by this court. An order was entered indicating that the amended agreement superseded all other agreements. The amended agreement awarded certain bank accounts and CDs to the Wife. Maintenance was modified to state, “The Husband shall pay to the Wife the total sum of $10,000 per month for a period of 53 months.”

Husband paid Wife a total of $530,000. However, there was a dispute as to whether the payments Husband made in November 2010, December 2010 and January 2011 should be credited towards

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the 53 payments for which he was responsible under the amended agreement entered on January 26, 2011.

The trial court found that Husband owed three more payments, as the trial court interpreted the amended agreement to require Husband to pay a set amount of maintenance payments beginning with the date of the court’s approval of the new agreement and did not give Husband credit for payments made under the original agreement. On appeal, the court found that the amended agreement was a new agreement based on new consideration of the parties. The amended agreement because effective the date it was filed with the court, thereby making Husband responsible for 53 payments from the date of the entry of the new agreement. Therefore, the decision of the trial court was affirmed.

*In re Marriage of Harms*, 2018 WL 2075554 (Ill.App. 5 Dist.), May 3, 2018**

Husband filed a petition for dissolution of marriage in 2005. At that time, the parties had been married for 19 years and 9 months. In 2007, a judgment for dissolution of marriage was entered, and Husband was required to pay Wife nonmodifiable maintenance until Wife obtained age 65. After Wife reached the age of 65, either party could request a review of the original maintenance award. Both parties later filed petitions to modify maintenance. The trial court found that the amended version of the statute was applicable, and that there was no reason to depart from the guidelines in calculating maintenance. The trial court denied Husband’s motion to terminate or reduce maintenance and granted Wife’s motion to increase maintenance.

Husband appealed, arguing that the trial court erred by awarding permanent maintenance without finding there was a reason to deviate, since their marriage was not 20 years. Husband also argued that both the amount and duration of maintenance were an abuse of the trial court’s discretion. The appellate court affirmed the decision of the trial court. The appellate court stated that although it concluded that the trial court’s interpretation of the statute was not correct, the appellate court did not believe the trial court’s use of the new guidelines to calculate the amount of maintenance necessarily required a reversal. The appellate court stated that even where the guidelines are not applicable, an award of maintenance that is consistent with the guideline amount will typically be a proper exercise of the court’s discretion. Thus, as long as the court considers the required factors and does not abuse its discretion in determining the amount or duration of maintenance, the appellate court may affirm its ruling. The appellate court found no abuse in discretion in the amount or duration (permanent) of maintenance ordered by the trial court.

*In re Marriage of Kesinger*, 2018 WL 4773362 (Ill.App.4 Dist.), Sept. 28, 2018*

In 2013, the parties’ 31-year marriage was dissolved. Husband was an attorney and owned his own practice. Wife occasionally worked for Husband but had no other employment or income other than Social Security benefits. The trial court ordered Husband to pay Wife $3,250 per month in maintenance. Wife subsequently filed two petitions for rule to show cause for Husband’s failure to pay maintenance. Husband filed a motion to vacate or modify the trial court’s maintenance order. In 2016, the trial court conducted a hearing and found Husband in contempt. The trial court also modified the maintenance amount to $2,346.80 per month due to Husband’s retirement.

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due to his law license being suspended, and monthly monies received from his daughter and Social Security. Wife then filed a third motion asking Husband to be held in contempt for failure to pay the required maintenance. The trial court held Husband in contempt and determined Husband willfully failed to pay maintenance even though he had the ability to do so.

Husband appealed, arguing the trial court erred in calculating the $72,000 he received from his daughter as income when determining the maintenance calculations. Husband argued the monies were a result of his suspension from the practice of law and were a loan he had to repay. The appellate court affirmed the decision of the trial court. The appellate court found that the trial court did find a substantial change in circumstances and reduced Husband’s maintenance amount based on his retirement and suspension from the practice of law. As the trial court made findings that Husband was not credible in his assertion that the monies received from his daughter were a loan, the appellate court found no abuse of discretion by the trial court.

*Lederer v. Lederer, 2018 WL 4388409 (III.App.3 Dist.), Sept. 13, 2018*

After hearing the evidence, the trial court terminated Wife’s maintenance. The appellate court affirmed the decision of the trial court.

In this case, the evidence reflected that Wife spent 50% of her time with her boyfriend. The evidence also reflected that the boyfriend gave Wife and her daughter access to his credit card and were both on his cell phone plan. The boyfriend had also given Wife the down payment for her townhome and she was added to his car insurance. The parties also spent all of the holidays together. Because the majority of the factors pointed to a de facto marriage, the decision of the lower court was upheld.

*In re Marriage of Madden, 2018 WL 581054 (III.App. 2 Dist.), Jan. 26, 2018*

Pursuant to the judgment for dissolution of marriage, Husband was ordered to pay permanent maintenance to Wife, subject to the statutory provisions for termination. After the conclusion of the proceedings, Wife became pregnant by another man and gave birth to the child. Because of finances, Wife stayed at the other man’s residence when she was pregnant and after the baby was born. However, both Wife and the child’s father testified that they were not in a relationship. The court found that the evidence did not establish a de facto marriage. The court had heard no evidence that Wife and the child’s father had agreed to any kind of permanent romantic or domestic relationship. The evidence showed that Wife and child’s father had a shared residence, and that Wife was mainly there while the child’s father was working overnights. Therefore, they had not formed a household. There was also no evidence that the parties comingle their finances. Therefore, the trial court was affirmed.

*In re Marriage of Miller, 2018 WL 4232252 (III.App. 4 Dist.), Sept. 5, 2018*

The parties were married in 1993 and had two children. In April 2014, Wife filed a petition for dissolution of marriage. At the time, Wife was 41 years old and not employed outside the home. Husband was 52 years old and employed as an electrical supervisor of construction services earning approximately $110,000 per year. Wife had several different part-time jobs throughout the course of the marriage. At the time of trial, Wife was working part-time as a licensed practical nurse making $16.50 per hour. She was taking classes to become a registered nurse and testified

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that she hoped to find full-time employment. Wife testified that she had several medical conditions, but that none of them prevented her from obtaining full-time employment. The trial court found that a maintenance award to Wife was not appropriate. The trial court noted the disparity in income but stated that the division of assets made an equal and equitable distribution of the marital estate. Further, Husband’s income would decrease upon his retirement, and Wife’s income would increase if she took advantage of her training and education. Husband had retirement accounts through work but could not obtain statements as to the amounts contained in each as of the date of the marriage. The trial court took the value of the accounts as of the date of trial and determined a set amount to be Husband’s nonmarital property based on a calculation of 88 nonmarital months out of 375 total months.

Wife appealed, arguing the trial court abused its discretion in denying her maintenance and that the fractional approach used to divide the retirement accounts was improper. The appellate court found that maintenance was appropriate to Wife. The parties had been married for 21 years. A spouse seeking maintenance should not be required to sell assets of impair capital to maintain herself in a manner commensurate with the standard of living established during the marriage. Wife had a lower earning potential and deferred her education. Husband had the ability to pay maintenance. The appellate court remanded the case for a calculation of a just award. The appellate court found that the trial court’s decision as to the calculation of the retirement accounts was not against the manifest weight of the evidence.

_In re Marriage of Mutsbauer, 2018 WL 298352 (Ill.App. 3 Dist.), Jan. 4, 2018_*

The parties were married in 1999 and a judgment for dissolution of marriage was entered in 2012. The parties had two children and were granted joint custody with Wife serving as the primary residential parent. Husband agreed to pay Wife unallocated support in the amount of $1,800 per month, which would be reviewable in 33 months. In August 2015, Wife filed motion for extension of support. Husband filed a response requesting the obligation be terminated as Wife did not attempt to become self-supporting. Both parties appeared at the hearing pro se, and based on sections 5/504 and 5/510 of the IMDMA, the trial court found that Husband had the ability to pay maintenance and Wife had a great need for it as she testified that she could not secure employment as her vision was bad and which greatly affected her ability to drive. The court awarded maintenance to Wife at $2,248 per month, which was reviewable after October 1, 2019. Husband retained an attorney, who filed a motion to reconsider which was denied. Husband filed an appeal.

The appellate court reversed and remanded the decision of the trial court. The appellate court found that there was no evidence to support the trial court’s findings that Wife was losing her eyesight and that she could not obtain employment. Further, the substantial income disparity between the parties was not based on a complete consideration of the statutory factors in 5/504. There was no evidence presented on Wife’s potential earning capacity or her efforts at securing employment.

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*In re Marriage of O’Gara*, 2018 WL 170571 (Ill.App. 1 Dist.), June 1, 2018*

A judgment of dissolution was entered in February 2014, which incorporated the parties’ marital settlement agreement. The martial settlement agreement provided, in pertinent part, that Wife’s right to maintenance was to be reserved for 12 years from the date of entry of the judgment of dissolution.

In May 2015, Wife filed a petition seeking maintenance from Husband due to her insufficient current income and the inability to sustain the affluent lifestyle that she enjoyed during the parties’ marriage. In her petition, Wife requested that the trial court impute income to Husband of $300,000 and award her maintenance reflecting that amount. In his response, Husband alleged that the parties suffered financial difficulties that rendered them insolvent. In April 2016, the trial court issued a ruling finding that Husband had intentionally and in bad faith placed himself in a negative financial position solely to avoid his financial obligations to Wife. The trial court imputed to Husband an annual gross income of $250,805 for the purposes of calculating maintenance to Wife and found that an upward deviation from the support guidelines was appropriate. Husband subsequently filed a petition for reconsideration.

In December 2016, the trial court entered two orders: the first order granting Husband’s petition for reconsideration, and a second order vacating the April 2016 order and entering an amended order. In the amended order, the trial court found that there was no basis on the record to impute income to Husband. Wife appealed.

On appeal, Wife argued that Husband’s reduced income was a result of his voluntary unemployment and that he chose to remain voluntarily under-employed. Wife further alleged that Husband’s past earnings in a former high-paying employment established that Husband had the ability to pay her maintenance, thus enabling her to enjoy the same lifestyle she had during the parties’ marriage. The appellate court found that Husband had terminated his former high-paying employment prior to Wife’s filing for dissolution of marriage. The appellate court affirmed the trial court’s determination that there was no basis to impute income to Husband.

*In re Marriage of Preston*, 2018 WL 3699722 (Ill.App. 2 Dist.), Aug. 1, 2018*

The parties were married in September 1990. In June 2013, Wife filed a petition for dissolution of marriage. The parties had no children. At the time the petition for dissolution of marriage was filed, Wife was 58 years of age and Husband was 57 years of age. In 1991, Husband founded a business, Littlestar. At the time of the trial, Wife was unemployed but was receiving a salary of $100,000 per year from Littlestar. Husband earned over $1 million per year. Both parties had business valuations. The trial court determined that Littlestar was acquired subsequent to the parties’ marriage, and therefore it was marital property. The trial court valued Littlestar at $5.688 million, in accordance with Husband’s business valuation. The trial court found that Wife was entitled to fifty percent (50%) of the assets, including Littlestar. The trial court awarded Wife permanent maintenance of $12,000 per month.

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Husband filed an appeal, challenging the trial court’s classification of Littlestar as marital property and disputing the trial court’s distribution of the parties’ marital assets. Wife filed a cross-appeal, arguing the trial court erred in its valuation of Littlestar, erred in her maintenance amount, and erred in not awarding her more than 50% of the marital assets. The appellate court affirmed the decision of the trial court. There was a rebuttable presumption that Littlestar constituted marital property as the business was established during the marriage. Although Husband took out a loan in his name only, Littlestar had been operating and generating sales revenue for six or seven months prior to Husband obtaining the initial loan. Husband failed to show by clear and convincing evidence that the operative loans were collateralized solely by nonmarital property. The appellate court found that the trial court did not err in dividing the marital property 50/50. The trial court considered Section 503(d) of the Illinois Marriage and Dissolution of Marriage Act and took into account the parties’ ages, occupations, and disparity in vocational skills. Turning to Wife’s arguments, the appellate court found that the trial court did not give substantial consideration to Husband’s testimony regarding the business. The appellate court found that the trial court valued Littlestar within the range testified to by the parties’ experts. Further, regarding Wife’s maintenance award, as the parties’ earned a combined gross annual income in excess of $250,000, the statutory guidelines did not apply. The appellate court did not find that the trial court’s ruling as to maintenance were arbitrary, unreasonable, or that no reasonable person would take the view adopted by the court. The appellate court found that the trial court did not abuse its discretion when dividing the marital estate.

_In re Marriage of Raab, 2018 WL 2189638 (Ill.App. 1 Dist.), May 11, 2018_*

The parties were married in 2005. In 2014, Husband filed a petition for dissolution of marriage. In 2016, the parties’ two children were eight and four. Wife was 41 years of age and in good health. Wife was unemployed but had a master’s degree in education and had worked as a teacher for nine years. Husband was 43 years of age and was an attorney. His net income in 2015 was $219,460. In 2016, the firm had financial difficulties, Husband no longer received monthly draws, and rather was paid as a contract attorney. Husband sought new employment and maintained a job search diary. In 2016, Husband also began to suffer from a rare and debilitating skin disease that had a significant impact on his health. During the proceedings, Wife withdrew $31,500 from the parties’ HELOC and depleted a $61,000 personal injury award. She further depleted $85,000 of marital money. From January to June 2015, Husband voluntarily paid Wife $8,400 each month, plus $17,550 of a $24,000 bonus he received. From July 2015 to May 2016, Husband paid Wife $88,000 in support. In October of 2016, the trial court issued a judgment for dissolution of marriage, which gave a detailed account of the parties’ conduct during the proceedings and considered the parties’ ages, education and future employability. The trial court found that maintenance to Wife would not be appropriate.

In June 2017, Wife filed an appeal. The appellate court affirmed the decision of the trial court denying maintenance to Wife. The trial court had found that Wife was excessively litigious in the case, was irresponsible in her spending, failed to give the court clear and complete information about her financial situation, gave inconsistent and unreliable testimony about the amount of money she thought she would need to sustain her lifestyle, and gave the court almost no 

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information about the standard of living established during the marriage. As such, the appellate court found that there was not an abuse of discretion, as the trial court carefully weighed each factor of Section 504 of the Illinois Marriage and Dissolution of Marriage Act.

*In re Marriage of Reda*, 2018 WL 5911630 (Ill.App. 1 Dist.), Nov. 9, 2018*

The parties were married in 1976 and a judgment for dissolution of marriage and marital settlement agreement was entered in December 2013. The parties were married for 37 years. Pursuant to the marital settlement agreement, Husband was to pay Wife $10,000 per month in maintenance, which would be reviewable in seven years. In 2015, Husband filed a petition to modify or terminate maintenance, alleging that there was a substantial change in circumstances as Wife received a $2.5 million inheritance from the death of her mother. Wife and Wife’s brother testified that neither had received any of the inheritance monies yet. The trial court denied Husband’s petition to modify or terminate maintenance, finding that Husband failed to prove a substantial change in circumstances. The trial court noted that a $2.5 million inheritance is a substantial change of circumstances in some cases, but not in this case. Both parties were aware of the trust and Wife’s mother’s old age when they entered into the marital settlement agreement, and which is what Wife’s maintenance award and the asset division was based off. The trial court noted that the trust was a part of the marital settlement agreement, and that it was the only explanation the trial court could think of as to why Wife would not have been awarded permanent maintenance.

Husband appealed. The appellate court affirmed the ruling of the trial court. The appellate court found that Husband failed to meet the burden of showing a substantial change in circumstances, and that the trial court properly denied Husband’s petition. The trial court’s determination that Wife’s trust was taken into consideration during the negotiations of the marital settlement agreement was not an abuse of discretion, where any proceeds from the trust could have been viewed as potential income and properly considered by the court. The appellate court stated that Wife’s income, consisting only of maintenance from Husband, had not changed and to date she had not received any monies from the trust. The appellate court noted that perhaps when maintenance comes reviewable or when an actual, substantial change in Wife’s circumstances occurs, a petition to modify or terminate maintenance may garner a different ruling.

*In re Marriage of Spielmann*, 2018 WL 5896587 (Ill.App. 1 Dist.), Nov. 7, 2018*

The parties were married for 27 years when their divorce was finalized in 2011. Per the marital settlement agreement, Husband’s gross base annual income was $155,800 and Wife was awarded maintenance in the amount of $4,335 per month, which represented 50% of Husband’s net income. Later in 2011, Husband filed a motion to reduce maintenance as his employment was terminated. Husband withdrew his motion as he found a new, higher paying job, and an agreed order was entered awarding Wife maintenance in the amount of $2,296.86 every two weeks based on Husband’s gross base annual income of $170,000. In 2014, Wife filed a motion to increase maintenance based on Husband’s increased income and her alleged disability of agoraphobia (panic and anxiety). Husband filed a counter-petition to modify or terminate maintenance based on Wife’s failure to become self-supporting and involvement in a continuing conjugal relationship. A psychiatrist and a licensed clinical professional counselor testified on

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behalf of Wife. The trial court found Wife and both experts to be not credible. The trial court did not find that wife was in a continuing conjugal relationship. The trial court found that Wife had an affirmative obligation to rehabilitate herself and seek employment, and reduced Wife's maintenance to $3,600 per month for two years at which time maintenance would be reviewed. The trial court also found that Wife and her counsel engaged in discovery gamesmanship, Wife's counsel's handling of discovery was egregious, Wife's allegation she was disabled was false, and Wife's allegations that Husband's income had increased were untrue. The trial court ordered Wife to pay $26,398.62 to Husband's attorney and ordered Wife's attorney to pay $9,881.75 to Husband's attorney under Rule 137, Rule 219 and Section 508(b).

Wife appealed both the maintenance award and the sanctions judgment. The appellate court found that the marital settlement agreement expressly stated Wife was to receive 50% of the net of Husband's income, and if that was what the parties' agreed to, then Wife is entitled to enforce that provision. Thus, there was a question of intent. The appellate court vacated the trial court's order awarding a decrease in maintenance and remanded the matter to the trial court to first determine whether the parties agreed Wife would be entitled to 50% of Husband's net income. The trial court may then revisit the cross-motions for modification of maintenance. The appellate court reversed and remanded the trial court's position of the maintenance order that imposed an affirmative obligation on Wife to be financially independent and that ordered a review of maintenance within two years. None of this was contained in the MSA and thus violated same. The appellate court upheld the trial court's award of sanctions against Wife and her attorney relating to Wife's claim of disability, and the discovery associated with same. The purpose is to prevent the filing of false and frivolous claims. The appellate court reversed all other sanctions against Wife and her attorney. The issue of sanctions was remanded only for recalculation of attorney's fees.

_in re Marriage of Swanson, 2018 WL 6118292 (Ill.App. 2 Dist.), Nov. 19, 2018_

The parties were married in 2009. Following a trial on the matter, a judgment was entered dissolving the parties' marriage in 2018. Husband was a police officer and Wife had significant health issues and was unemployed. Wife received $1,588 per month in disability benefits. Husband argued that maintenance to Wife should be denied based upon a car given to her by "Ben" and based upon her ongoing conjugal relationship with Ben. The trial court rejected Husband's argument that Wife was residing with Ben on a resident, continuing and conjugal basis. Although they spoke frequently on the phone, they lived in different states, saw each other in Illinois on only six occasions, they did not come into finances, they did not take vacations together and she never visited his residence. The trial court found that Wife received Social Security benefits in the amount of $19,056 per year while Husband's 2017 gross income was $60,720.40. The trial court determined Wife needed maintenance, as she had not been employed since 2012 and was likely not employable. The trial court ordered Husband to pay Wife $1,071.24 per month in maintenance for 36 months. The trial court used Husband's April 2017 paycheck and extrapolated his annual income accordingly. Husband filed a motion to reconsider and clarify the judgment regarding the calculations of his income and Wife's income, which was denied.

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In 2018, Husband filed an appeal. Husband argued that Wife was not entitled to maintenance as she had sufficient means to support herself and was cohabitating with Ben, and that the trial court miscalculated both his income and Wife’s income. The appellate court affirmed the decision of the trial court. The appellate court stated that the dispute regarding Husband’s income was over how many weeks’ pay was reflected on Husband’s paystub; however, the paystub was not included in the record on appeal so there was no way of evaluating Husband’s position. The appellate court found that Wife may have some benefit from the car given to her, but Husband provided no evidence and no expert which would have allowed the court to value Wife’s interest in the car. As such, the trial court property declined to include that value in Wife’s gross income. The appellate court found that the evidence showed that the issue of Wife allegedly cohabitating on a continuing, conjugal and resident basis was “not even close”. There were no signs of mutual commitment and permanence that would indicate a de facto marriage relationship.

*In re Marriage of VanHovelyn, 2018 WL 6040019 (Ill.App. 4 Dist.), Nov. 16, 2018**

In September 2014, the court entered a judgment for dissolution of marriage. However, the judgment reserved several issues for “negotiation and judicial determination.” At the time of entry of judgment, the issue of maintenance was yet to be determined. After years of litigating, in January 2018, the court entered a retroactive maintenance award in the amount of $73,760.31. On appeal, Husband argued that the trial court abused its discretion by awarding retroactive maintenance. The appellate court agreed and reversed and remanded the decision of the lower court.

The appellate court found that throughout the more than five years this case was pending, the issue of maintenance was reserved repeatedly. By the time of the final hearing in this case, which addressed only maintenance, there were no pleadings filed seeking retroactive maintenance. During the pendency of the case, there had been several changes in circumstances such as Husband losing his job as a police officer and Wife voluntarily quitting her employment for new employment and cohabiting with her boyfriend. The parties agreed that based on her cohabitation, any maintenance award would be for the time period of 2012-2016. The appellate court found that the award by the trial court could not be considered temporary maintenance, as Wife never asserted the need for financial assistance pending the outcome of the case. Further, the award could not be considered rehabilitative maintenance since Wife was gainfully employed and voluntarily chose to terminate employment and cohabitate with her boyfriend. Further, once she found the new job, it was determined that she would be making more money than her previous job. Therefore, because the evidence failed to indicate that Wife was entitled to any of the common forms of maintenance for the period of time for which it was awarded, the trial court’s award amounted to a redistribution of property after the parties had already agreed to the distribution of property. Therefore, the appellate court found the award to be improper and reversed the decision.

*In re Marriage of Wojcik, 2018 WL 6625574 (Ill.App. 1 Dist.), Dec. 17, 2018**

The parties were married in 1978. In 2005, a judgment for dissolution and marital settlement agreement were entered, wherein Husband was to pay Wife unallocated support for 60 months, reviewable. The parties had three children, all of whom emancipated near the end of the 60-month period. At the conclusion of the 60-month period, Wife filed a petition to set maintenance.

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Husband filed a motion to dismiss, stating he completed the support obligation he undertook per the marital settlement agreement. The trial court denied Husband’s motion to dismiss. A hearing was held on the issue of maintenance to Wife. The trial court found that Wife had made sincere efforts to rehabilitate herself, and even with imputed income Wife could never achieve the level of income that would allow her to maintain the lifestyle the parties enjoyed during the marriage. The trial court gave great weight to the 30-year duration of marriage, and the impairment of Wife’s income due to her duties as a homemaker. The trial court found Wife was entitled to permanent maintenance and set an amount certain per month. The trial court also ordered Husband to pay retroactive maintenance back to the date of Wife’s filing of her petition, plus prejudgment interest on that amount.

Husband filed an appeal. Husband argued that the trial court erred in denying his motion to dismiss, as he fulfilled his maintenance obligation per the agreement. The appellate court affirmed in part and reversed in part the trial court’s decision. The appellate court found that Wife made no waiver of maintenance in the marital settlement agreement, and that Husband’s support obligation to Wife was expressly made reviewable. The appellate court found that the trial court did not abuse its discretion by finding that maintenance payments to Wife were warranted under the circumstances of this case. There was nothing in the record that would permit the appellate court to find that no reasonable person could undertake the view adopted by the trial court. The appellate court reversed the trial court’s order for Husband to pay prejudgment interest on the retroactive maintenance award, as it was not warranted. Interest accrues on support obligation that becomes due and remains unpaid. Husband’s support obligation did not become due until the trial court entered a final order that it was due.

See also ADMISSION OF EVIDENCE, In re Marriage Moderwell, 2018 WL 170210-U (Ill.App. 2 Dist.), Dec.10, 2018*

See also ALLOCATION OF PARENTING TIME AND RESPONSIBILITIES, In re Marriage of Yost, 2018 WL 180283-U (Ill.App.4 Dist.), September 13, 2018*

See also CHILD SUPPORT In re Marriage of Juris, 2018 WL 503238 (Ill.App. 1 Dist.), Jan. 22, 2018**

See also COHABITATION. Moore v. Moore, 2018 WL 5098860 (Ill.App.2 Dist.), Oct. 16, 2018*
See also DISSIPATION, In re Marriage of Bolt, 2018 WL 3424414 (Ill.App. 4 Dist.), July 11, 2018*
See also, DISSIPATION, In re Marriage of Denotto and Swift, 2018 WL 6046766 (Ill.App. 2 Dist.), Nov. 16, 2018**

See also DISSIPATION, In re Marriage of Selezneva and Gavin, 2018 WL 1358868 (Ill. App. 2 Dist.), March 14, 2018*

See also PROPERTY, In re Marriage of Jones, 2018 WL 3545929 (Ill.App. 3 Dist.), July 23, 2018**
See also PROPERTY, In re Marriage of Basgall, 2018 WL 724846 (Ill.App 2 Dist.), Feb. 2, 2018*
See also PROPERTY, In re Marriage of Tompkins, 2018 WL 2347147 (Ill. App. 1 Dist.), May 22, 2018**

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MODIFICATION OF JOINT CUSTODY JUDGMENT

In re Marriage of Abu-Ghallous, 2018 WL 180298 (III.App. 2 Dist.), Aug. 20, 2018*

The parties were married in 1999 and had two children. In 2013, Father petitioned for dissolution of marriage. A joint custody agreement was incorporated into the judgment of dissolution, which included provisions regarding domestic travel, international travel reservation, passports, and consent-to-board.

In January 2018, Father petitioned the court to issue a judgment regarding international travel, specifically: (1) allowing him to travel to Poland for one week with the minor children; (2) allowing him to renew the U.S. passports; and (3) ordering Mother to remove the minor children’s names from the “Don’t Fly List” and “Children’s Passport Issuance Alert Program” with the State Department. The trial court conducted a hearing on Father’s petition for international travel. Mother feared that Father would abscond with the children, because he had threatened to do so in the past. The trial court granted Father’s petition and Mother filed a motion to stay judgment pending appeal. The trial court denied Mother’s motion and Mother moved the appellate court to stay the judgment. The appellate court granted Mother’s motion.

On appeal, Mother argued that the existing joint custody agreement mandated that vacation time must be spent in the United States. The appellate court found that “reservation” in the context of international travel as provided in the joint custody agreement means that the status quo should remain in place pending a successful petition to modify. Here, the status quo was a prohibition against international travel. Further, the appellate court found that Father did not prove that a modification of the joint custody agreement was in the children’s best interest or that there had been a substantial change in circumstances regarding the modification.

The appellate court reversed and remanded the decision of the trial court, finding that the trial court had misinterpreted the parties’ joint custody agreement and erred in allowing international travel. Further, the appellate court held that a successful petition to modify pursuant to 750 ILCS 5/610.5 was necessary to change the terms of the joint custody agreement.

In re Marriage of Pono, 2018 WL 3539836 (III.App. 1 Dist.), July 20, 2018*

The parties were married on August 16, 1997 and had two children. The parties’ marriage was dissolved on May 19, 2010, wherein a parenting agreement provided Wife sole custody of the children. Regarding Husband’s parenting time, the parenting agreement stated, “Parenting time shall be as liberal and frequent as the parties may agree upon”, but also contained a specific default schedule. In Fall 2016, one of the children ran away from home. Since then, the parties verbally agreed Husband would have parenting time with the child from Sunday through Thursday. In January 2017, Husband filed a petition for modification of parental responsibilities and parenting time, asking the court to memorialize the parties’ verbal agreement. In October 2017, Wife filed a petition for rule to show cause for Husband’s failure to follow the parenting agreement. In November 2017, the matter proceeded to hearing, and the court-appointed guardian ad litem made a verbal report that the child was afraid of her step-father. There were no signs on physical abuse, but there were outburst and rage that made the child afraid and prefer

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to live with her Father. The guardian ad litem recommended the verbally agreed-upon schedule the parties had been exercising remain in place. The court also held a hearing on the petition for rule to show cause and found Husband in indirect civil contempt. There was no reason Husband could not comply with the parenting agreement and admitted the step-father hadn’t demonstrated any incidents of rage since 2015. The trial court ordered Husband committed to the Cook County jail until he purged himself of contempt by exercising the court ordered parenting time, and ordered the commitment stayed until December 7, 2017.

Husband filed an appeal, arguing the trial court denied him due process and abused its discretion when it entered the order for indirect civil contempt because is violation of the parenting agreement was not willful or contumacious. The appellate court affirmed the decision of the trial court. Husband was not deprived of his due process as the rule notified him of the contempt charge and described the facts; notified him of the time and date of the hearing; and allowed him to explain at the hearing. Further, Husband’s actions were willful and contumacious. Illinois courts have held that a parent must comply with court-ordered visitation even when the child has expressed hostility toward the other or when the child does not desire to visit the other parent.

See also RELOCATION In re Marriage of Stimson, 2018 WL 1308880 (Ill.App. 4 Dist.), March 12, 2018*

MOTION FOR INVOLUNTARY DISMISSAL

In re Marriage of Lewin, 2018 WL 170175 (Ill.App. 3 Dist.), May 30, 2018**

Wife filed a motion to enforce or clarify the marital settlement agreement (MSA), arguing that it did not assign the mortgage payments for the marital residence to her and that it was her understanding that Husband would remain responsible for paying the mortgage as he had always made the payments in the past. Pursuant to the MSA, Husband was allowed to remain in the marital residence, and he was responsible for the payment of the utilities. Husband moved to dismiss pursuant to 2-615. The trial court found that the MSA was not ambiguous and granted the dismissal under section 2-619(a)(9).

On appeal Wife argued that the dismissal was improper, arguing that the trial court erred when it converted Husband’s 2-615 motion into a section 2-619 motion. Because of this, she alleged she was unable to submit evidence to show that an ambiguity existed in the MSA. She also argued that the court failed to apply the provisional admission approach to interpret the MSA.

On review, the court found the MSA was a fully integrated agreement and intended to be the entire agreement between the parties. The parties inserted an integrated clause in the dissolution judgment. The integration clause precluded the use of provisional admissibility approach and extrinsic evidence was not admissible to support Wife’s claim that the agreement was ambiguous regarding the mortgage payment. Because Wife could not present any extrinsic evidence, she could not have been prejudiced by the trial court’s treatment of the section 2-615 motion as a section 2-619 motion.

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MOTION TO VACATE

In re Marriage of Cole, 2018 WL 650475 (Ill.App 1 Dist.), Jan. 30, 2018*

After a protracted trial, the court entered a judgment for dissolution of marriage. However, the trial court reserved matters for future allocation and determination. One such issue was each parties’ interest in a Schaumburg property. On the date that the trial was to commence on this issue, the parties participated in a pretrial settlement conference to resolve the disposition of the parties’ interest in the Schaumburg property. The court gave recommendations and continued the trial to the following day. Between the pretrial and the trial, Husband’s attorney emailed Wife’s attorney with the terms of an agreed order. At the trial, all parties represented that there was an agreement. The court entered an order, stating in relevant part, “the parties have reached an agreement in principle to settle all unresolved issues between them for a total payment of $750,000. Between today and the next status date of July 11, 2014, the parties shall, in good faith, attempt to conclude a final Agreed Order resolving all matters between them.” Shortly after court, the parties exchanged drafts of the agreed order. Each draft awarded Wife $750,000 and ordered Husband to be responsible for any income tax owed by the parties. Each draft also set forth the payment plan of the $750,000. At the next court date, the parties reiterated that there was an agreed order and that the parties were trying to figure out the payment plan. The parties represented to the court that the first payment was due that day. About a month later, Wife filed a contempt petition because she had yet to receive any payments. Eventually, Husband paid $450,000, but disputed his obligation to pay the remaining $300,000. In response to his change in position, Wife filed various motions including a petition to enforce the oral settlement agreement. The court granted the motion and Husband appealed.

On review, the appellate court found that there was a meeting of the minds on the material terms of the parties’ agreement to settle the reserved issues in exchange for payment of $750,000. The court found that the payment dates were ancillary issues, but that it was clear that the parties agreed Husband would make the payments in two installments. Although the trial court’s order contemplated that the parties would tender a final executed agreed order, such reference to a future writing did not bar enforcement of the oral settlement agreement. Therefore, the trial court properly granted the motion to enforce oral settlement because the agreement was not contingent on the execution of a written agreed order, and the parties agreed to all material terms of the settlement.

In re Marriage of Fults, 2018 WL 4234083 (Ill.App 5 Dist.), Sept. 5, 2018*

On November 23, 2015, the trial court entered a judgment for dissolution of marriage and marital settlement agreement (“MSA”) which addressed the distribution of the parties’ property. On that date, a hearing was held on the division of the parties’ assets. On the morning of the hearing, the trial court accepted a written consent from Wife indicating she no longer wanted to proceed with her retained counsel and wanted to continue pro se. After hearing, the trial court entered a final judgment of dissolution of marriage, which incorporated the final version of the parties’ MSA. Wife testified that she saw the MSA, that it had been fully explained to her, and asked the court to approve it. On March 3, 2017, Wife filed an amended petition under section 2-1401 of the Code of Civil Procedure seeking to vacate the property settlement, stating that the property settlement

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was unconscionable as her attorneys failed to discover all of the property, knew the settlement was below a fair share, and abandoned her the morning of the prove-up hearing. Wife explained that she was addicted to Xanax, but after the divorce, she recovered from her addiction and discovered not all of the marital property was included in the marital settlement agreement. On April 18, 2017, Husband filed a motion to dismiss under section 2-615 of the Code. The trial court denied Wife’s section 2-1401 petition to vacate.

Wife filed an appeal. The appellate court found that the trial court denied Wife’s 2-1401 petition to vacate without addressing Husband’s 2-615 motion to dismiss. Thus, were facts sufficient, if true, to support the grant of relief under section 2-1401 are disputed, the trial court must hold an evidentiary hearing on the petition. The appellate court found that Wife’s petition made specific factual allegations concerning the existence of meritorious claims, i.e., that the parties’ property settlement agreement was unconscionable in that Husband concealed assets and that she was under extreme duress and emotional stress at the time she entered into the marital settlement agreement. Wife also made specific allegations concerning due diligence. A section 2-615 motion only considers the allegations of the pleadings to determine whether the section 2-1401 petition to vacate has sufficiently stated a cause of action. It does not consider the merits. Wife made sufficient allegations to survive a section 2-615 motion to dismiss, and as such, Wife is entitled to a full evidentiary hearing. The appellate court reversed and remanded the case for further proceedings.

_In re Parentage of J.R.G., 2018 WL 4240802 (Ill.App. 2 Dist.), Sept. 5, 2018*

The appellate court found that the default orders modifying the allocation of parental responsibilities in favor of Father are not void, and the trial court did not abuse its discretion in denying Mother’s petition to vacate the orders.

The parties were never married but had a minor child together while living in Florida. After the child’s birth, Mother moved to Illinois. Mother initiated proceedings in Illinois to establish parentage. Eventually the trial court entered an order establishing a reunification process between Father and child. While the case was still pending Mother moved to Washington, where she took elaborate steps to conceal the child’s whereabouts, including changing his name. She did not inform the court in Illinois or Father as to where she had moved. Father filed a petition to modify the allocation of parental responsibilities, and the court granted the petition. About a year after the petition was granted, protective services found the child and removed the child from his Mother and returned the child to Father in Florida. Mother filed a motion to vacate the default judgment under 2-1401 and the court denied same.

On appeal, the court found that the trial court had subject matter jurisdiction and personal jurisdiction as there were pending motions with the court when Mother went into hiding. It was necessary for Mother to establish due diligence in presenting her defense to Father’s petition and she did not do so.

* Unpublished/Rule 23(e)(1) decision.
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In re Marriage of Majewski, 2018 WL 2670510 (Ill.App. 5 Dist.), June 1, 2018*

The parties were married in March 1977. The parties’ assets largely consisted of equipment for Husband’s farming operations. In September 2015, the case went to trial. In October 2015, the trial court entered a memorandum of judgment in which it set a value for the farm equipment and awarded said equipment to Husband. The trial court also held Husband in indirect civil contempt for willful failure to pay Wife temporary maintenance and Wife’s attorney fees as directed in prior court orders. In April 2016, the trial court entered a corrected judgment of dissolution. In May 2016, the trial court entered an order distributing net proceeds from the parties’ real estate holdings. The amounts in the May 2016 order reflect the farm equipment awarded to Husband, as well as the temporary maintenance arrearage and attorney fees owed by Husband to Wife.

In March 2017, Husband filed a motion to vacate the corrected judgment of dissolution pursuant to section 2-1401 of the Code of Civil Procedure. Wife responded by filing a motion dismiss, which was granted after a hearing on the parties’ motions. Husband subsequently filed an amended motion to vacate the corrected judgment of dissolution. The trial court denied the Husband’s amended motion and Husband appealed.

On appeal, Husband claimed that he was diligent in bringing the alleged errors to the trial court’s attention. However, the appellate court found that, under the circumstances, the trial court acted in its discretion in finding that Husband did not act with due diligence in timely filing his section 2-1401 petition. The appellate court further stated that Husband’s lack of diligence did not result in an excusable mistake. The appellate court affirmed the trial court’s decision, citing that the trial court has discretion in determining whether to grant or deny a section 2-1401 petition and that absent an abuse of discretion, a reviewing court should not disturb the trial court’s judgment.

In re Marriage of McGuinn, 2018 WL 1176624 (Ill.App 2 Dist.), March 3, 2018*

Husband appealed from the trial court’s dismissal of his petition to open or partially vacate the judgment for dissolution of marriage.

Pursuant to the parties’ marital settlement agreement, Husband was to transfer 50% of his stock in a tree service business to Wife. The parties agreed that they would continue to own and operate the business, with each of them receiving an equal amount of net income. The parties were to enter into a letter of intent within 30 days of entry of the judgment. Wife filed a number of motions for Husband’s failure to agree to a letter of intent and failure to pay her an equal portion of the revenues. Husband filed a petition to open or partially vacate judgment pursuant to 2-1401. In his petition, Husband alleged that the parties’ agreement to jointly own and operate the business was based on their mutual belief that they would be able to agree to the terms of an operating agreement, and further cooperate in the operation of the business. Husband alleged that the parties’ belief that they could jointly operate the business was a mutual mistake of the parties. Wife filed a 2-615 motion to dismiss, which was granted.

On appeal, Husband argued that he adequately alleged the existence of a mutual mistake of fact, that being the parties’ mistaken belief that they could work together as co-owners of the business. The court found that a mutual mistake in fact is when the parties are in actual agreement, but the

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instrument to be reformed, in its present form, does not express the parties’ real intent. Here, Husband’s section 2-1401 petition failed to allege the existence of an agreement pertaining to the operation of the business other than what was expressed in the MSA. This failure was fatal to Husband’s argument as he lacked any basis for arguing that the MSA did not reflect the parties’ original agreement. Generally, a mistaken prediction, as we have in this case, does not qualify as a fact that is material to a contract. Husband made no allegations that the MSA was different than the parties’ original agreement. Therefore, the decision of the trial court was affirmed.

NONPARENT VISITATION

Sours v. Summers, 2018 WL 6735471 (Ill.App. 5 Dist.), Dec. 21, 2018*

Mother and Father were never married but had three children as a result of their relationship. The children’s paternal grandfather filed a petition for visitation by a nonparent pursuant to section 602.9 of the Illinois Marriage and Dissolution of Marriage Act (IMDRA), alleging that Mother would not allow him to see the children and requesting a visitation schedule be entered. There was considerable testimony regarding whether he was actually the paternal grandfather of the children, as there was never any establishment that he was the biological father of the children’s Father. The trial court indicated there must be a finding of standing through evidence that he was in fact the paternal grandfather before any nonparent visitation would attach. The trial court dismissed the petition for lack of standing.

The paternal grandfather appealed. The appellate court declined to answer the legal questions of whether he was actually the paternal grandfather. The appellate court affirmed the decision of the trial court based on section 602.9 of the IMDMA, finding that the paternal grandfather failed to present evidence that the denial of visitation with him was harmful to the children’s mental, physical and emotional health.

NOTICE OF WITHHOLDING

In re Marriage of Schmidgall, 2018 WL 4328098 (Ill.App. 3 Dist.), Sept. 11, 2018**

Wife filed a third-party complaint pursuant to section 35(a) of the Income Withholding for Support Act against third-party defendant, Shives, Inc. (hereinafter “Shives”). Wife alleged that Shives knowingly failed to withhold money for child support and maintenance payments from Husband’s wages in accordance with the notice to withhold income for support. The trial court assessed statutory penalties against Shives in the amount of $66,700.

Shives appealed, arguing that penalties should not have been assessed because there was not proper service of the notice to withhold. The notice to withhold was sent via regular mail and also via certified mail, which Shives refused. Wife filed a cross-appeal and argued that the trial court erred in calculating the penalties assessed against Shives, and that the penalties should have been $150,000. Wife argued that the mandatory $100 per day penalty should have been assessed seven business days after the first pay period and should have only stopped accruing once Shives remitted each and every payment to the State Disbursement Unit (SDU). The appellate court concluded there was sufficient proof of service. Shives knew the parties were getting divorced and that it would have to withhold income for Husband as support payments. Shives had been sent a regular mailing to the attention of its payroll department containing the notice to withhold. Shives refused the certified mailing. The appellate court disagreed with Wife’s

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argument that Shives should continue to be assessed the $100 per day penalty until every payment was forwarded to the SDU. The appellate court found that the $100 per day penalty should be limited to days Wife went without the support payment after the statutory seven business-day grace period for forwarding payment to the SDU expired. The appellate court vacated the judgment of the trial court imposing $66,700 in penalties against Shives and remanded the matter for a hearing to determine the applicable section 35(a) penalties.

See also RELOCATION, In re Marriage of Fermin L. v. Megan S., 2018 WL 172873-U (Ill.App. 1 Dist.), September 20, 2018*

**ORAL AGREEMENTS**

* Cole v McElwain, 2018 WL 650475 (Ill.App. 1 Dist.), Jan. 30, 2018*

A three-day trial was conducted to determine, among other things, the value and division of the parties’ marital property. The marital estate included a parcel of real property that the parties intended to develop from residential use. At the conclusion of the trial, the court reserved allocation of the parties’ interest in the property. Subsequently, the parties engaged in substantial motion practice and exchanged extensive discovery regarding the property. The issue was set for trial, but the parties chose to conduct a pretrial conference. Following the pretrial conference, the parties conducted several settlement negotiations over the course of several case management conferences. On the third one, the parties reached an oral settlement agreement and they informed the judge of the terms of said agreement on the record. The court reiterated their settlement agreement in the record and ordered the parties to draft a written agreed order for the next status date. However, Husband would not enter an agreement because he claimed that he did not have enough money to complete the terms of the agreement. He also claimed that he only entered the agreement because he felt pressured due to the court threatening him with contempt and injunctions that would prevent the development of the property. Later, Husband argued that the settlement agreement wasn’t accurate in that it failed to account for certain debts owed on the property and wasn’t the result of a proper evaluation.

Husband filed a motion to vacate, which was denied, so Husband appealed. On appeal, the court upheld the oral settlement agreement, finding that the agreement was clear, certain and definite in its provisions and by its nature of being presented to the court, the settlement agreement was enforceable. The court found that refusing to enforce the agreement would encourage the refusal to honor negotiated settlements based on a belated change of heart. Therefore, the court found that the parties reached a valid oral settlement agreement and that the enforcement of that agreement was not contingent on an executed agreed order.

**ORDER OF PROTECTION**

* In re Marriage of Conopeotis, 2018 WL 3742171 (Ill.App. 2 Dist.), Aug. 2, 2018*

The appellate court affirmed the decision of the trial court when the trial court dismissed Wife’s emergency verified petition for order of protection. The parties entered an allocation judgment. The judgment included the provision that the “children will be granted exclusive use of their bathroom and changing area for privacy purposes.” After the entry of the allocation judgment,

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Wife filed a verified petition for an emergency order of protection under the Illinois Domestic Violence Act of 1986. Wife’s allegations related back to allegations that were litigated prior to the entry of, and specifically dealt with, in the allocation judgment.

On appeal, Wife argued that the trial court improperly found that the merger doctrine precluded litigation of claims that arose prior to the allocation judgment. While the court did not directly address the merger doctrine, the appellate court found that the trial court properly dismissed Wife’s petition because her claims were resolved by the allocation judgment and therefore barred from re-litigation under the principles set forth by our supreme court.

McClanahan v McClanahan, 2018 WL 3455218 (Ill. App. 2 Dist.), June 28, 2018*

The trial court’s grant of a plenary order of protection was not against the manifest weight of the evidence, as the court was entitled to find that Husband’s demeaning comments to Wife constituted harassment. Husband had a history of verbally abusing Wife. Wife’s allegations went as far back as 2010. In 2017, Husband called her a “textbook narcissist” and that she needed help while using the communication website, Talking Parents. Wife indicated that this caused her to file an order of protection “because of the years and years of emotional abuse.”

Here, the evidence showed that Husband’s statements were clearly not necessary to accomplish a reasonable purpose under the circumstances. The purpose of Talking Parents was to facilitate constructive discussions. The court found that in light of the purpose of Talking Parents, Husband’s derogatory statements to Wife were clearly not necessary to accomplish a reasonable purpose under the circumstances.

Padilla v. Kowalski, 2018 WL 3244835 (Ill.App. 4 Dist.), June 28, 2018*

The appellate court affirmed the trial court’s denial of Husband’s petitions for substitution of judge and the trial court’s finding that Husband had engaged in abusive behavior that resulted in a two-year plenary order of protection.

With respect to the domestic violence action: The parties had an extensive history of appearances before the courts concerning domestic violence actions. An ex-parte order of protection was entered in favor of Wife. Husband filed a motion for a rehearing. During the first action before the appellate court, the appellate court held that the trial court failed to conduct a rehearing within 10 days, which was a violation of the Domestic Violence Act. The appellate court ordered a rehearing within 10 days of the appellate court decision. Three days before the scheduled hearing date, Husband filed a motion for substitution of judge, which again delayed the proceeding because the case had to be transferred to another judge for the substitution of judge hearing. The substitution of judge motion was denied. However, the proceedings were delayed again because Husband’s counsel withdrew, and he was granted 21 days to obtain new counsel. Before the 21-day period was up, Husband also filed a motion to reconsider the court’s denial of his substitution of judge motion, which further delayed the proceedings. That motion was also denied. A hearing commenced on a plenary order, which was delayed, in part, because Husband then filed a petition

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to vacate the earlier denial of substitution of judge petition. That petition was denied. Ultimately the plenary order was entered.

The appellate court affirmed the two-year plenary order of protection and the denials of his motions for substitution of judge. There was insufficient evidence to support a substitution of judge petition for cause. The fact that the judge had a prior friendship with the attorney representing one of Wife’s third-party witnesses, and that judge and that attorney had met in chambers and talked, was not enough to require a substitution. An “appearance of impropriety was not enough”. There was no evidence the judge and the attorney discussed anything related to the case at hand, nor was there any evidence of prejudice by Judge toward Husband. The history of the case made it clear that Husband claimed almost all of the judges who heard portions of his case were prejudiced against him, yet he offered no evidence of such prejudice. Husband claimed the delays were caused by the judges, yet upon review of the record, it is clear that Husband’s own petitions caused most of the delays and continuances in the case.

The order of protection was upheld. The evidence supported the trial court findings. The appellate court was not persuaded by Husband’s argument that Wife’s actions were “a subterfuge to gain custody”. The appellate court also found unpersuasive Husband’s argument that the hearing should have been continued to allow him to secure the appearance of witnesses on his behalf. The court had previously warned him that his witnesses needed to be ready by a date certain for the hearing and Husband had plenty of time to secure his witnesses. Finally, the appellate court held that the trial court had made oral findings on the record as required by the Domestic Violence Act and that Wife’s testimony was credible, while the Husband’s testimony was not.

*Ritter v. Jolly, 2018 WL 3463334 (Ill.App. 1 Dist.), July 13, 2018*

Petitioner and Respondent had a prior dating relationship. Both parties were lawyers employed by the City of Chicago Law Department. After the break up, Respondent vandalized photos in Petitioner’s office, left a cup of urine in her office, and either ejaculated or urinated in her office. A two-year plenary order of protection was entered in February of 2013. In January 2015, Petitioner filed a motion to extend the original order of protection. There had been a number of issues since the entry of the original order of protection, specifically Respondent engaged in harassing behavior by contacting Petitioner’s supervisors at her place of employment and filing a FOIA request with her employer in an effort to threaten her livelihood.

On appeal, Respondent did not challenge the trial court’s conclusion that his conduct would cause a reasonable person emotional distress. He contends that the trial court improperly found that his actions were “not necessary to accomplish a purpose that is reasonable under the circumstances.” Specifically, he argued that his actions were motivated by his understanding that Petitioner was involved in what Respondent described as the City’s efforts to suppress release of a video of the police-related shooting of Laquan McDonald. The appellate court found that Respondent’s actions were not necessary to accomplish a purpose that is reasonable under the circumstances. Further, his actions represented “escalating conduct” and constituted harassment.

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Respondent appealed from an order denying his motion to reconsider the trial court’s entry of a plenary order of protection filed by Petitioner. Respondent argued that the trial court erroneously allowed Petitioner to testify about allegations that were not contained in her verified emergency petition for an order of protection, specifically, that Respondent had recently pushed the child and hit him with a cell phone.

On appeal, the court found that section 214 of the Act provides that “the trial court shall consider the nature, frequency, severity, pattern and consequences of the respondent’s past abuse of the petitioner or any family or household member as well as the danger that any minor child will be abused or neglected.” Therefore, the appellate court found that the trial court was not only allowed to consider the evidence that Respondent recently pushed the child and hit him with a cell phone, it was required to do so.

In re Marriage of Sumhat, 2018 WL 2120425 (Ill.App. 1 Dist.), May 7, 2018*

In July 2017, Mother sought to restrict Father’s parenting time by obtaining an emergency order of protection. Mother alleged that Father possessed child pornography. At the same time, Mother filed for a two-year plenary order of protection. The emergency order of protection was granted, and two weeks later the plenary order of protection was set for hearing in September. The emergency order of protection was extended and Father brought a motion seeking a rehearing. The motion was heard in August. At the hearing, Father tested positive for drugs, and the emergency order of protection was extended. When the parties appeared for the September hearing, Mother tried to dismiss the plenary order of protection, and she argued that she wanted to keep the August order in place. After arguments, the parties proceeded to a hearing on the plenary order of protection. The evidence indicated that Father’s pornography was on a password protected computer. The judge reviewed the pictures admitted in evidence and indicated that there was no way to determine if this was child porn, but that he did not think it was. Further, Mother testified that the children never said that they feared their Father or felt unsafe and that she only learned of the pornography from Father’s ex-fiancé. The court acknowledged the positive drug test but concluded the drugs were not done in front of the children and had no effect on Father’s relationship with the children. The court entered an order denying the plenary order of protection and vacating the August order.

On appeal, Mother argued that the trial court erred in vacating the August order without conducting a plenary hearing. She argues that the September hearing was insufficient because her attorney was told it was solely regarding the plenary order of protection and the court denied her the opportunity to sufficiently question Father regarding his drug use. Despite Mother’s argument, the transcript shows that the court heard testimony on both the pornography and the drug use. The trial court is not required to hold two separate hearings as Mother is demanding. The appellate court affirmed the decision of the lower court.

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The parties were married and one child. Following their divorce, Mother remarried “David.” The minor child told Father that, while on a trip to Wisconsin, David and other adults were drinking and forced the minor child to physically fight another child. The minor child had multiple bruises from the fight. As a result, Father obtained a two-year order of protection against David. David was required to leave the house that he shared with Mother. However, David violated said order of protection when Mother allowed him into her residence while the minor child was present. Thus, Father asked the court to enter an order of protection that would require the minor child to live with him, while providing Mother visitation. Although a Department of Children and Family Services (DCFS) investigation was conducted and Mother initially followed DCFS’s recommendation to seek her own order of protection against David, Mother withdrew it. Mother filed a pro se motion with the trial court to have the case “moved to Room 360 before Judge Coppedge,” because there were “two other cases related to this one” before said Judge. The trial court entered an order that denied Mother’s “motion to consolidate.” The court entered a two-year plenary order of protection that prohibited David to have “any contact” with the minor child while the minor child was at Mother’s home or in her care. Mother appealed.

On appeal, the court found that the trial court reasonably interpreted Mother’s pro se motion as a motion to consolidate and not as a motion for substitution of judge. Because Mother did not properly seek a substitution of judge in the trial court, she was barred from claiming it on appeal. Next, the court found the requisite evidence of abuse for an order of protection consisted of Mother allowing David to be in her home with the minor child, despite knowing that David had been determined to be a threat to the minor child and that an order of protection had been entered against David. The court affirmed, noting that Mother has an independent obligation to keep the minor child away from David and the risk of harm that he presents.

PARENT-CHILD RELATIONSHIP

In re Marriage of Dee, 2018 WL 1999154 (Ill.App. 2 Dist.), April 27, 2018**

The parties, a same-sex couple, were married in Iowa in 2009. They were living in Illinois when Petitioner gave birth to a child who was conceived through artificial insemination. The parties separated eight months later, and Petitioner filed a petition seeking a declaration of the nonexistence of a parent-child relationship between child and Respondent. Respondent sought a declaration of her parent-child relationship with the child, as well as a judgment allocating decision-making responsibilities and parenting time between the parties. The trial court declared that there was a parent-child relationship between Respondent and child.

On review, Petitioner challenged the trial court’s determination that Respondent was also the child’s parent. Prior to a number of legislative changes, Illinois statutory authority did not recognize parental rights where a child was conceived by an unmarried couple through artificial insemination. Illinois courts have accepted common-law claims in such cases, particularly because one’s participation in artificial insemination in not some whimsical or trivial act. The evidence shows that the parties registered as a couple in an artificial insemination program. They agreed that Petitioner would have the first child, and Respondent would have a second child at a later date. Together, the parties selected a sperm donor and specifically chose a donor whose

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physical characteristics were similar to Respondent. The parties jointly paid for medical and fertility treatment. When the parties learned the baby was a girl, they gave the child the same middle name as Respondent. Both are identified as co-parents on the birth certificate, and both parents were listed on the birth announcement. Also, both parties took off time to care for the child.

On appeal, Petitioner argued that the court erred in not making specific findings as to the best interest factors. However, these findings are not a prerequisite to declaring the existence of a parent-child relationship. Petitioner also argued that there was no written consent between the parties to conceive a child through artificial insemination; the only requirement in the Gestational Surrogacy Act. Because Petitioner and child share genetic material, Petitioner was not a gestational surrogate for the child. Therefore, the contractual requirements that govern gestational-surrogacy arrangements have no bearing here. The decision of the lower court was affirmed.

Paternity

*In re Marriage of Sparks, 2018 WL 6332308 (Ill.App. 1 Dist.), Dec. 3, 2018***

A judgment for dissolution of marriage and incorporated custody judgment were entered on May 26, 2016. The custody judgment addressed the parties' financial obligations for their one remaining minor child. In 2016, Mother filed a petition for rule to show cause for Father's failure to pay educational expenses for the minor child. Father filed a petition to terminate the parent and child relationship pursuant to section 205 of the Illinois Marriage and Dissolution of Marriage Act and then filed an amended petition pursuant to section 2-1401 of the Civil Code of Procedure. Father requested a DNA test be conducted. The trial court ordered a DNA test, which showed Father was not the biological father of the minor child. The trial court vacated all orders regarding parenting time, allocation of parental responsibilities, child support and child-related expenses.

Mother filed an appeal. The appellate court affirmed the decision of the trial court. The appellate court found that the trial court heard the testimony of Mother and found her to be not credible. Father exercised due diligence in bringing his petition to terminate is child and parent relationship within two years of his actual knowledge that he was not the biological Father.

Petition for Dissolution of Marriage

*Barghouti v. Carillo, 2018 WL 6735228 (Ill.App. 3 Dist.), Dec. 21, 2018*

Husband, an inmate at the Illinois Department of Corrections, filed for divorce, claiming irreconcilable differences. Wife answered the petition and admitted the irreconcilable differences. She also filed a counter-petition in which she claimed irreconcilable differences. Husband admitted to the grounds in his response. During the proceedings, Husband filed several petitions for a writ of habeas corpus ad testificandum. The trial court declined to writ Husband into court. The trial court entered a default judgment for dissolution of marriage. Wife was granted sole custody of the minor children, neither party was awarded maintenance, and Wife was awarded the marital residence.

On appeal, Husband argued that the trial court erred and abused its discretion by entering the default judgment and denying his motion for a writ of habeas corpus to be present at the trial. On appeal, the court found that prisoners are not free to attend civil trials, even though they may be

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a party, as a matter of choice. The decision whether to allow a prisoner to personally appear in a civil proceeding is within the trial court's discretion. Since Husband did not contest the grounds, and his affidavit indicated no claim to property, the court found that the judgment was not granted based on Husband's failure to appear but rather upon evidence before the court.

PREMARITAL AGREEMENT

In re Marriage of Hartung, 2018 WL 576078 (III.App. 5 Dist.), Jan. 24, 2018*

The parties entered into a prenuptial agreement. Pursuant to the agreement, Husband waived any interest in Wife's retirement benefits or pension plans. The prenuptial agreement was silent as to maintenance. At the time of the dissolution of marriage, Wife was only receiving retirement and pension benefits as her sole source of income. The trial court found Husband was not entitled to maintenance because the sole source of Wife's income were the retirement benefits, and any maintenance award would be based on those benefits.

On appeal, the limited issue is whether the waiver of Husband's interest in Wife's retirement accounts includes a waiver of any payments received from those benefits. In this case, the court found that there was no indication that the parties intended to distinguish between the waiver of the retirement plans and the income generated from those plans. Thus, a maintenance award based on Wife's retirement benefits, her only source of income, would be contrary to the terms of the parties' expressed intent and would result in an improper modification of the prenuptial agreement. Therefore, the decision of the lower court was affirmed.

In re Marriage of Kranzler, 2018 WL 171169 (III.App.1 Dist.), Sept. 27, 2018**

The parties were married in October 1984, on the same day that they executed a premarital agreement. Husband is eighteen years older than Wife. The parties' children are emancipated. The parties' premarital agreement provided, in pertinent part, for the retention of pre-marriage property, the division of marital property, a division of Husband's net estate at the time of his death, and a payment agreement from Husband to Wife in lieu of maintenance. In October 2015, Wife filed a petition for dissolution. Husband subsequently filed a motion for declaratory judgment under section 2-701 of the Code of Civil Procedure, requesting the circuit court to find the premarital agreement valid and enforceable.

Wife filed a motion for voluntary dismissal of her dissolution action. After Wife filed her motion for voluntary dismissal, Husband filed a counterpetition for dissolution of marriage and a motion for leave to file said counterpetition. Husband further filed a response to Wife's voluntary dismissal of her petition, asserting that his motion for declaratory relief could stand as an independent cause of action surviving the dismissal. In November 16, the circuit court granted Wife's motion for voluntary dismissal of her petition for dissolution but found that Husband's motion for declaratory judgment constituted an independent action surviving dismissal of her petition. The circuit court further denied Husband's motion for leave to file a counterpetition for dissolution of marriage.

Husband then initiated a separate dissolution of action, to which Wife filed an answer and counterclaim. Husband moved to dismiss the counterclaims in his dissolution case. Finally, from a procedural standpoint, Wife filed a motion to dismiss Husband's motion for declaratory judgment in the present case on the basis of lack of subject matter jurisdiction and failure to satisfy the

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termination-of-controversy required for declaratory relief. A trial was held on Husband’s motion for declaratory relief. At trial, both parties testified that they did not want to get married but faced significant family pressure from both sides due to Wife being pregnant. Husband told Wife that they could get married, if a premarital agreement was executed. Wife testified at trial that she had reviewed the premarital agreement with her lawyer but claimed that she did not understand what she would receive in the event of divorce or what she was giving up. She did acknowledge that she was presented with an exhibit listing Husband’s assets when she met with her lawyer. Wife further testified that Husband fully supported her financially during the marriage. Pursuant to the premarital agreement, Wife was to receive $2,500 per month for 100 months. At trial, Wife testified that amount was insufficient to cover her medical bills, and further testified to having several current health issues. The circuit court entered an order finding that the premarital agreement was valid and enforceable and granting Husband’s motion for declaratory relief. Wife appealed.

On appeal, the court addressed the following issues: 1) subject matter jurisdiction; 2) validity of the premarital agreement; 2) unforeseen condition of penury; 3) duress and undue influence; 4) fairness and reasonableness; and 5) unconscionability. First, the court addressed subject matter jurisdiction, citing heavily from *In re Marriage of Best*, which found that an appellate court may consider a declaratory judgment motion concerning the validity and effect of a premarital agreement before a final dissolution order has been entered, as long as the requirements under section 2-701 have been met. Here, the court found that, at the time the trial court considered Wife’s motion for voluntary dismissal of her petition for dissolution, an active controversy regarding the agreement remained. The court further noted that several matters were pending before the trial court at the time and pointed out that Wife raised as counterclaim in Husband’s separate dissolution filing the same arguments that she raised in the present case (against the declaratory judgment action). The court found that the validity and enforceability of the premarital agreement was not "merely an ancillary issue," but formed a separate claim for relief based on separate statutory grounds.

Next, the court considered the validity of the premarital agreement. The court found that the trial court applied the correct law in asserting the validity of the premarital agreement, in that it applied common law and not the Illinois Uniform Premarital Agreement Act.

The court next addressed Wife’s claim that the premarital agreement should be invalidated as it created an unforeseen condition of penury given her poor health. The court agreed with the trial court's finding that, at the time the parties' signed the agreement, it did not create an unforeseen condition of penury and was fair and reasonable given the parties’ age difference, the maintenance provision and the estate provision.

Wife contended that the trial court erred in finding that the premarital agreement was not procured under duress or by undue influence. Wife argued that a confidential relationship existed between her and Husband, that she was younger than him, foreign born, from a sheltered background, was a non-native English speaker, and was physically ill during her pregnancy when she signed the agreement. The court noted that Wife testified that although she was ill during her pregnancy, she was nevertheless working. She had also retained a lawyer and had him explain the premarital agreement and make revisions to the same. The court acknowledged that the trial testimony

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showed that neither party particularly wished to be married but married because their families wanted them to because of the pregnancy. The court found that the trial court's factual determinations were not manifestly erroneous.

Wife further argued that the $2,500 per month payments deemed the agreement neither fair nor reasonable due to her the amount being insufficient and unfair given her health costs, standard of living, Husband's wealth, and the total amount she could receive being capped by $250,000, less amounts paid for temporary maintenance and attorney's fees. The court noted that the agreement did not leave Wife without a financial settlement and did not involve a complete waiver of maintenance. The court also noted that the dissolution case remains pending, and the circuit court noted that it would make further rulings in the future and "hear the condition of the parties in a trial."

As for unconscionability, the court noted its finding was consistent with its prior analysis regarding the same issues and held that Wife had not shown that the agreement was so unconscionable such that it involved a "lack of meaningful choice by one party" under the circumstances.

Based on the above, the court affirmed the trial court's order allowing Husband's motion for declaratory judgment to stand on its own and its order finding the premarital agreement valid and enforceable.

_in re Marriage of Woodrum_, 2018 WL 4501579 (Ill.App. 3 Dist.), Sept. 20, 2018**

Prior to the marriage, the parties executed a prenuptial agreement. After eight years of marriage, Husband filed a petition for dissolution of marriage. The prenuptial agreement precluded an award of maintenance. During the pendency of the proceedings, the trial court awarded Wife temporary maintenance, and subsequently, found the parties’ prenuptial agreement valid and enforceable. The trial court found that under the premarital agreement, the parties had only waived maintenance “upon dissolution”, not upon the filing of a petition for dissolution of marriage.

Wife filed an appeal, arguing that the prenuptial agreement was not valid and enforceable. Husband filed a cross-appeal, arguing that the trial court erred in awarding temporary maintenance to Wife. The appellate court affirmed the decision of the trial court. The parties’ premarital agreement was enforceable unless Wife was able to prove, pursuant to section 7(a) of the Illinois Premarital Agreement Act, that the agreement was unconscionable when it was executed and that, before execution, she was not provided a fair and reasonable disclosure of Husband’s assets. Wife failed to meet her burden. However, it found the trial court did not err in awarding temporary maintenance to Wife during the pendency of the case, prior to the entry of the dissolution judgment. The provision in which the parties waived maintenance was not effective until the time of the dissolution of the parties’ marriage.

PROCEDURE

See also ADMISSION OF EVIDENCE, _In re Marriage Moderwell_, 2018 WL 170210-U (Ill.App. 2 Dist.), Dec. 10, 2018*

* Unpublished/Rule 23(e)(1) decision.
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PROPERTY

*In re Marriage of Basgall, 2018 WL 724846 (Ill.App 2 Dist.), Feb. 2, 2018*

On appeal, Husband argued the trial court erred (1) by classifying 68.724% of a business was marital, (2) by failing to find Wife dissipated marital assets, and (3) by awarding maintenance to Wife.

At trial, the court found that 31.276% of the business was non-marital. However, Husband failed to rebut the presumption that the additional ownership that he acquired in the business as well as his acquisition of other businesses were marital. The court found that after considering the debt owed by the business, the marital portion of the business was valued at $878,987 and awarded the Wife $300,000 from the business. With regards to the dissipation claim, the trial court found that Wife met her burden by accounting for her expenditures, including using money to pay for her living expenses after Husband stopped paying temporary maintenance. Finally, with regards to maintenance, the trial court considered the factors section 504 of the Illinois Marriage and Dissolution of Marriage Act. The trial court found that the parties made more than $250,000 and that Wife was a candidate for maintenance. Therefore, the trial court awarded her $6,000 for 72 months as and for reviewable maintenance.

On review, Husband argued that he presented evidence that prior to the marriage he owned 45.51% of the business. Husband presented his 2004 tax return as evidence. However, the tax return did not establish that Husband acquired the ownership prior to the parties’ marriage in 2004. Further, based on evidence presented by Wife’s expert, the paperwork for the acquisition was not completed until well after the parties’ marriage. Therefore, the trial court’s decision was not against the manifest weight of the evidence.

On appeal, Husband next argued Wife dissipated $83,515.15 in marital assets. The appellate court found that ample evidence was provided by Wife to prove that there was no dissipation. Wife used the money to pay her attorneys, mortgage, credit cards, and living expenses. Further, Husband had ceased paying Wife temporary maintenance in the amount of $6,200 per month. Therefore, there was no abuse of discretion.

Finally, Husband argued the trial court’s award of spousal support was an abuse of discretion. Husband argued Wife was capable of earning $60,000 as opposed to the $43,000 that she was earning at the time of dissolution. However, the evidence, specifically Wife’s job history, would not have supported an imputation of income to Wife. Therefore, there was no abuse of discretion.

*In re Marriage of Blomenkamp, 2018 WL 4678572 (Ill.App.5 Dist.), Sept. 26, 2018*

In 2006, the parties executed a mortgage on their marital estate in favor of Wells Fargo. Wife signed a promissory note, Husband did not. In 2007, Husband filed a petition for dissolution of marriage. Although the parties’ marriage was dissolved in 2010, and all property issues were reserved. In 2011, Wells Fargo brought a foreclosure action against the parties. Husband filed a petition in the foreclosure action to consolidate the divorce and foreclosure proceedings, which was denied by the foreclosure court. In 2011, while the foreclosure action was pending, Husband filed a motion for leave to file an amended complaint in the divorce action, requesting the trial court name Wells Fargo as a third-party respondent in the parties’ divorce proceeding as the

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validity of the mortgage was at issue. The trial court granted Husband’s motion, and Husband filed an amended complaint alleging Wells Fargo had a property interest in the marital residence and requesting the court to determine same.

In 2012, the trial court entered an order finding Wells Fargo in default for failing to file an answer to the amended complaint. The trial court also found that Wells Fargo failed to perfect its mortgage and security instrument regarding the real estate as Wells Fargo had not obtained a homestead waiver from Husband. As a result, the trial court found that Wells Fargo had no legal or equitable interest in the marital residence and ordered Wells Fargo to execute a release of the mortgage/security. In 2013, a judgment for dissolution of marriage and marital settlement agreement was entered, finding Wells Fargo’s interest had been terminated and stating the parties could apply for a release of the mortgage. Also, in 2013, the foreclosure court dismissed Wells Fargo’s complaint. In 2016, Wells Fargo filed a section 2-1401(f) petition seeking to vacate the 2012 default order. Wells Fargo argued the amended complaint provided insufficient notice that its interest in the mortgage could be terminated. The trial court denied Wells Fargo’s 2-1401(f) petition, as well as a subsequent motion to reconsider.

Wells Fargo appealed, arguing the trial court’s ruling exceeded the prayer for relief contained in the complaint. The appellate court affirmed the decision of the trial court. Husband’s complaint specifically requested the trial court to determine Wells Fargo’s interest. As such, the trial court’s determination was consistent with the prayer for relief. Wells Fargo failed to demonstrate unfair surprise. Wells Fargo was properly served with the complaint and failed to respond.

In re Marriage of Booth, 2018 WL 2085661 (Ill.App. 3 Dist.), May 3, 2018*

Husband and Wife were married for 28 years. At trial, court awarded Wife permanent maintenance and divided the marital estate on a 60/40 basis, with 60 percent to Wife. The court also ordered Husband to refinance mortgages on properties awarded to him within one year, to be responsible for all joint tax liability and to maintain $1.5 million in life insurance to secure Wife’s maintenance. Husband appealed. Appellate court affirmed on all counts. With regard to the property division, the appellate court considered that Husband will retain 65% of the parties’ combined gross income and has more earning potential than Wife, and that it could not conclude that “no reasonable person” would take the view adopted by the trial court. Appellate court also reasoned Husband has sufficient income and assets to refinance the properties within a year. Similarly, while Husband received the tax liability, he also was awarded tax benefits. Further, he was the sole income earner at the time the tax liability was incurred, so it was reasonable of the trial court to place the burden on him to ensure the accuracy of the information used to prepare the returns.

In re Marriage of Jachim, 2018 WL 4859524 (Ill.App.2 Dist.), Oct. 5, 2018*

The appellate court found that the trial court did not abuse its discretion in dividing the parties’ marital assets. At the conclusion of the trial, the court awarded various investment properties to Husband. Husband alleged that the court failed to consider the various encumbrances on those properties, which would diminish the value of the properties. However, based on the review of the

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record, it is clear that the court did consider the encumbrances when determining the value of the properties, and the encumbered values are reflected in the Judgment.

_In re Marriage of James and Wynkoop_, 2018 WL 2440635 (Ill.App.2 Dist.), May 31, 2018**

Husband owned auto body shop and business ("ARC") prior to marriage. During the marriage, he purchased property with funds from ARC's account as well as two loans. The property was titled in his individual name, one loan was in his individual name and one was in ARC's name. Husband charged ARC rent and deposited the rent checks into the parties' joint account and then paid the mortgage on the property from that account. The trial court classified ARC as Husband's nonmarital property but classified the property because it was purchased after the date of marriage and Husband did not meet his burden of proof pursuant to 750 ILCS 5/503(a) to show by clear and convincing evidence that the property was acquired by a listed method to show said property was nonmarital. The appellate court affirmed. Because the property was acquired during the marriage, it is presumed to be marital property. Section 503(a) of the IMDMA contains an "exclusive and specific list of nonmarital property". The burden of proof is on the party claiming the exception. Husband's only evidence at trial to support his claim was his own inconsistent and muddled testimony. Therefore, he did not meet his burden of proof.

_In re Marriage of Johnston_, 2018 WL 2187427 (Ill.App. 3 Dist.), May 11, 2018*

In 2009, a judgment for dissolution of marriage was entered, which awarded Wife exclusive possession of the marital residence. If Wife did not sell the residence after five years, she would be required to pay Husband one-half of the equity. Six years later, Husband filed a petition to determine the equity in the former marital residence. After a hearing on the matter, the trial court determined the equity to be $33,000.

Wife appealed, arguing that the trial court should have considered the mortgage balance on the residence at the time of hearing, not at the time of the divorce, in determining the equity. The appellate court reversed and remanded the decision of the trial court, stating that the trial court did not follow the clear language of the judgment. Rather, the trial court read such a provision in the order to achieve a more equitable result, which was improper. The appellate court found that the trial court was required to read the language as written, which would have led it to conclude the equity in the former marital residence at the time of the hearing was $10,800, half of which is $5,400.

_In re Marriage of Jones_, 2018 WL 1805299 (Ill.App. 2 Dist.), April 13, 2018**

The parties were married in 1992. Wife alleged she was a homemaker and part owner of the Law-Jones Funeral Homes. Husband denied that Wife was a part owner and stated that Wife was an employee. The trial court found that Husband obtained an interest in Law-Jones before the marriage, and therefore, it was nonmarital property; that the marital estate should be reimbursed by Husband's nonmarital estate in the amount of $652,045.61 for payments made from his income during the marriage for his share of acquisition of stock, and that one-half should be awarded to Wife; and that the marital property should be divided 49.61% to Husband and 50.39% to Wife.

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Wife filed an appeal, challenging the trial court’s finding that Law-Jones was non-marital property. The appellate court affirmed the decision of the trial court. Husband’s burden was to establish the date of acquisition by a preponderance of the evidence. The appellate court noted that the trial court found testimony to be credible that Husband acquired the interest prior to the marriage. Further, none of the stock certificates contained Wife’s name as a shareholder, nor did any of the other corporate documents admitted into evidence. The appellate court found that the trial court did not abuse its discretion in dividing the marital estate, even given Husband’s significant non-marital estate, in light of the hefty maintenance award to Wife.

In re Marriage of Jones, 2018 WL 3545929 (III.App. 3 Dist.), July 23, 2018*

The parties were married in 1991. Husband filed a petition for dissolution of marriage in July 2015. Husband was disabled, had not worked since 1987, and received monthly disability benefits from the Veteran’s Administration in the amount of $3,712.66 per month. Wife worked at K-Mart 40 hours per week earning $10.51 per hour. The parties lived in separate residences, and the three adult children lived with Wife. The trial court awarded Wife permanent maintenance in the amount of $460.00 per month, finding that Husband’s expenses “should be significantly lower” and that he “consistently spends money on non-essential items”. Husband’s gross earnings were more than double Wife’s gross earnings. The court divided the marital estate based on the disparity in the parties’ incomes.

Husband appealed. The appellate court affirmed the ruling of the trial court. The appellate court found that an equitable division did not always require an equal division. The appellate court found that based upon the statutory factors, Wife was in need of maintenance. It was noted that even if the three adult children did not live with Wife, she would still struggle to make ends meet. The appellate court also considered that the parties were married for more than 20 years, Husband was able to pay maintenance, and Husband’s income was more than twice that of Wife’s income.

In re Marriage of Martz, 2018 WL 931297 (III.App 2 Dist.), Feb 14, 2018*

The trial court entered an order requiring the parties to withdraw a specific amount from their 401(k) accounts as and for attorney fees. This appeal resulted from Husband’s three withdrawals totaling $120,000. Upon entry of the judgment, the trial court opined that Husband properly withdrew the $120,000 and that he should not solely be responsible for the tax consequences.

On appeal, Wife argued the trial court erred by failing to classify the withdrawals as advances to his share of the marital estate. Wife argued that the Illinois Marriage and Dissolution of Marriage Act classifies payment of attorney fees as advances of the marital estate. The court found that the evidence showed that prior to the entry of the qualified domestic relations orders (QDROs), equalizing the payments of attorney fees and costs, Wife had spent $283,606 on the litigation. Wife testified that approximately $180,000 of her fees were paid through personal loans. During the same timeframe, Husband had spent approximately $143,805 on attorney fees and costs. He testified that approximately $100,000 of those fees were paid with the QDROs and the remaining $20,000 that he withdrew was for his daughter’s college expenses. The appellate court agreed.

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that Wife’s fees were a result of her own doing, and the trial court choosing not to treat the 401(k) account withdrawals as advances was not an abuse of discretion.

Wife next argued the withdrawals from the 401(k) account should have been treated as dissipation of marital assets. However, Wife never amended her notice of dissipation or filed a new notice of dissipation after the withdrawals were made. The first mention of dissipation as it related to the attorney fees was in the Wife’s closing argument. Therefore, the appellate court did not consider the wife’s dissipation argument.

Finally, Wife appealed from the court ordering her to share in the tax liability that resulted from Husband withdrawing the money from his 401(k) account. The trial court found that both parties had withdrawn money from their retirement accounts. The appellate court found that requiring both parties to share in the tax burden was not an abuse of discretion.

_In re marriage of Moran_, 2018 WL 401190, (Ill.App. 4 Dist.), Jan. 12, 2018*

The parties owned a corporation called SMTKK, which included a Culver’s restaurant and the real estate the on which the restaurant was located. At the hearing on the parties’ petition for dissolution of marriage, Husband presented a valuation of the business based on the formula used by the Culver’s corporate office. The evaluation calculated the value of SMTKK as $1,433,816, but also found that the business owed $924,981 in outstanding loans, and further liabilities including payroll and insurance, resulting in a net value of $424,635. Therefore, Husband asserted that Wife’s half interest in the business totaled $212,317.50.

Wife objected to the exhibit containing this valuation on the basis that there was no testimony given on the issue. The court agreed with Wife and took the exhibit for his records but declined admitting it into evidence. The court ruled that Wife’s one-half interest was worth $254,417.50. Both parties filed motions to reconsider the distribution of the asset. The court found that Wife had submitted no evidence as to the value of the business, despite being awarded $6,000 to conduct a business evaluation. Therefore, Husband’s evaluation was the only evidence of the asset’s worth. Wife appealed.

On appeal, the court found that Wife presented no explanation or argument as to what the value of the business should have been. Further, neither party submitted a transcript of the former hearings, thereby failing to provide the appellate court the necessary information to assess the trial court’s ruling. Based on the same, the court affirmed the trial court’s ruling, finding that it must presume the court’s decision conformed with the law and facts, in the absence of a transcript of the hearing.

_In re Marriage of O’Connor_, 2018 WL 3968296 (Ill.App. 2 Dist.), Aug. 14, 2018*

Wife filed a petition for dissolution of marriage in August 2012. The parties had been married for 15 years and had four children. Wife was a stay at home mother, and Husband earned between $94,000 to $100,000 during the marriage, but towards the end of the proceedings took a job earning $84,000. Temporary orders were entered for child support and maintenance, as well as payments of the mortgage and expenses associated with the marital residence. In August 2016,

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a judgment for dissolution of marriage was entered, dividing the marital estate 60/40 in favor of Wife. The trial court found that Husband had modified the investment allocation in 2014 to his 401(k), which diminished the value by $29,196. As a result, the marital estate was diminished, and the court found there was dissipation. The trial court found that no prior order required Wife to pay the mortgage on the marital residence, as her income would not support it. The trial court found that prior orders indicated Husband was to pay the mortgage on the marital residence, and overdue payments were $69,112. Husband's nonpayment qualified as dissipation due to the parties' loss of equity in the home. The trial court awarded Wife maintenance from Husband's base salary and an additional 30% of gross income from all sources, including his trust withdrawals and employment bonuses. The court ordered Husband to pay child support, as well as the statutory percentage of income from all sources over and above his base income. Husband owed $33,816 in retroactive support, representing 40% of the $84,541 he received in disbursements. The trial court awarded Wife the marital residence, with Husband being solely responsible for any deficiency as a result of the foreclosure.

Husband filed an appeal. The appellate court remanded the cause, as the trial court abused its discretion in allowing Wife to allege stock market dissipation for the first time in closing arguments, and for failing to make a prima facie case by not proving Husband's transactions directly caused the losses. The trial court did not err in finding that Husband's trust distributions represented a monetary gain that may be considered income when calculating child support and maintenance. The appellate court found that the trial court misinterpreted the agreed order ambiguously making Wife responsible for "all expenses re: the marital residence," which would include the mortgage, foreclosure costs, and real estate taxes. As the appellate court vacated the rulings regarding the stock market dissipation and the marital residence expenses, the trial court was directed on remand to revisit the maintenance and child support awards and modify them or explain why they should deviate from statutory guidelines.

In re Marriage of Tompkins, 2018 WL 2347147 (Ill.App. 1 Dist.), May 22, 2018**

The parties were married in 1973. Husband filed a petition for dissolution of marriage in 2011. In 2016, an amended judgment for dissolution of marriage was entered, which states as follows: the Wife's marital portion of Husband's business was $4,195,054; Husband's shareholder loan was deemed as a shareholder distribution, and as such, the marital estate included a liability of $1,500,000 for taxes and withdrawals; Wife was entitled to maintenance in the amount of $19,200 per month, as well as 40% of any gross income Husband received over $576,000; Husband was to name Wife as sole beneficiary of $3,000,000 of the current life insurance policy until 2027; and the Husband was to pay Wife's outstanding attorney's fees in the amount of $69,877.

Husband filed an appeal regarding all issues. The appellate court affirmed the decision of the trial court. The appellate court found that throughout the trial, all of the relevant witnesses referred to the Husband's withdrawals as a loan. It was not against the manifest weight of evidence for the trial court to conclude that despite the withdrawals being labeled as loans, the actual marital liability would be, at most, the tax liability if the "loan" were officially relabeled to the shareholder distribution it appeared to be. The appellate court found that the trial court did not abuse its discretion in awarding the Wife maintenance in the amount of 40% of Husband's income. The

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parties had two residences that were to be sold, wherein the parties would receive equity and the expenses for those residences would no longer be incurred. Further, Husband’s business paid for many of his expenses, including but not limited to, all vehicle-related expenses, cell phone, travel, health insurance, etc. Wife did not receive any such benefits. The appellate court further found that the trial court did not abuse its discretion in placing the amount and obligation of the life insurance premiums on Husband. The appellate court found that Husband did not provide a sufficient record to conduct a meaningful review of the attorney’s fees the trial court awarded to Wife.

_In re Marriage of Van Hook, 2018 WL 170934-U (Ill.App. 4 Dist.), Nov. 27, 2018*_

The parties were married for 44 years when their marriage was dissolved. Wife was entitled to two pensions from her employment, which were to be divided equally by a QILDRO pursuant to the parties’ judgment for dissolution of marriage. In 2016, Husband filed a motion alleging that Wife had retired and she was receiving the entire pension amounts, requesting that the trial court order Wife to pay him his allocated share of said pension benefits. Shortly thereafter, Wife filed a petition to show cause, asserting that Husband never paid a loan for the residential property that he was awarded as ordered by the trial court and that she had been forced to pay said loan herself. Wife further alleged that Husband failed to pay a Chase credit card debt as ordered. As a result, Wife requested that her pension obligations to Husband be offset in light of Husband’s failure to pay the credit card debt and loan. The trial court entered an order granting Husband’s motion and determined that the pension allocation would be calculated from the date of marriage through the date of Wife’s retirement, even though Wife had indicated she would retire shortly after divorce and ended up working six additional years after the judgment. Wife appealed, alleging that: 1) the court erred in finding that she should pay Husband pension benefits accrued after the divorce; 2) the court lacked jurisdiction to modify the allocation of her pension benefits; and 3) she was entitled to “compensation” in light of Husband’s failure to pay the credit card debt and loan as ordered.

On appeal, the court first noted that the trial court appeared to have employed the reserved jurisdiction approach to the valuation of Wife’s pensions, although it was not clearly stated by the trial court. Therefore, the court found that the part of the pension benefits that Wife accrued after the divorce were due in part to contributions made during the marriage. The court further noted that both parties shared the inherent risk of postponing the receipt of pension benefits, so it was equitable that both parties share in the benefits of unforeseen increases in the value of the pension benefits when Wife chose to continue working for six additional years. Next, the court noted that the trial court had entered an order finding that Chase had forgiven the credit card debt that Husband was ordered to pay. Thus, the court found that Wife did not establish she was entitled to reimbursement related to same. Finally, the court found that it appeared the trial court did recognize Wife’s payment of the loan and determined that it should serve as an offset against any pension distribution to Husband.

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In re Marriage of Vivirito, 2018 WL 297251 (Ill.App. 1 Dist.), Jan. 3, 2018*

Husband contends that the trial court erred in declaring the retained earnings of a Sub-Chapter S corporation as marital property for the purpose of property distribution. Husband also argued that the court erred when imputing income to him and by awarding Wife 60% of the marital estate.

The appellate court found that the trial court’s classification of certain accounts that contained the retain earnings as marital property, was reasonable based on evidence presented. The accounts operated as personal accounts for the Husband and his brother as opposed to business accounts. Husband used the account to fund a personal loan to his brother and the repaid loan was funneled into another account. Husband, as a 50% owner, along with his brother, the other 50% owner, had sole discretion as to when and how funds would be distributed. The court also found that it was clear Husband was undercompensating himself. Even his own expert gave a range of salaries, and Husband was paying himself the low end of the range. Therefore, the court imputed income to Husband. Further, based on the record, the court considered the length of the marriage, incomes, earning potentials, etc. when determining the division of property and that the court did not abuse its discretion when doing so.

See also ALLOCATION OF PARENTING TIME AND RESPONSIBILITIES, In re Marriage of Yost, 2018 WL 180283-U (Ill.App. 4 Dist.), September 13, 2018*

See also CHILD SUPPORT In re Marriage of Juris, 2018 WL 503238 (Ill.App. 1 Dist.), Jan. 22, 2018**

See also CIVIL UNION, In re Civil Union of Hamlin v. Vasconcellos, 2018 WL 1358867 (Ill. App. 2 Dist.), March 14, 2018*

See also, DISSIPATION, In re Marriage of Denotto and Swift, 2018 WL 6046766 (Ill.App. 2 Dist.), Nov. 16, 2018*

See also DISSIPATION, In re Marriage of Selezneva and Gavin, 2018 WL 1358868 (Ill. App. 2 Dist.), March 14, 2018*

QUALIFIED DOMESTIC RELATIONS ORDER

In re Marriage of Relling, 2018 WL 6131528 (Ill.App. 4 Dist.), Nov. 20, 2018*

The parties divorced in November 2006 and entered into a marital settlement agreement wherein Wife was awarded 50% of Husband’s pension. A qualified domestic relations order (QDRO) was not entered at that time, and after Husband retired in 2016, Wife filed a motion for judgment clarifying the order, requesting she be deemed an irrevocable beneficiary and therefore be entitled to 24% of Husband’s disposable retirement pay. The trial court granted the motion and this appeal followed.

Husband argued that the trial court erred in its interpretation of the language of the marital settlement agreement. In this case, the parties disputed whether the division of Husband’s pension should have been calculated at the time of the dissolution or at the time of his retirement from the U.S. Air Force. The appellate court found that the language of the judgment was not ambiguous. The court found that the parties intended to freeze Wife’s interest at the limited time

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period that the parties were married. The judgment stated that Wife was only entitled to interest on the frozen amount, which was based on the calculation of the time they were married divided by the length of time Husband was a plan participant, at the time of dissolution, multiplied by 50% of the amount of the pension at the time the marriage was dissolved. Therefore, the decision of the lower court was reversed and remanded.

RECORD ON APPEAL

_In re Marriage of Chval_, 2018 WL 170701-U (III.App. 2 Dist.), Sept. 12, 2018*

The parties were married in 1987 and had five children. In February 2010, a judgment for dissolution was entered, which incorporated a joint parenting agreement and a marital settlement agreement ("MSA"). The MSA provided that Mother could file a petition to extend maintenance any time within 60 months of the judgment. Mother filed a petition to extend maintenance and set a child support obligation, on which a hearing was conducted over two days in February and March 2017. The record from the two-day hearing did not contain a complete transcript or any exhibits. The matter was continued for ruling. The record also lacks the transcript for that proceeding. Mother subsequently filed a petition for attorney’s fees, which was set for hearing. The record does not contain a transcript of the hearing on Mother’s petition for attorney’s fees. There were multiple continuances in the interim, including on the separate matter of the determination of Father’s arrearage. An order was entered in May 2017 setting the amount of child support arrearage and requiring Father to contribute to Mother’s attorney’s fees. Father then filed a motion to reconsider or, in the alternative, to re-open proofs. Mother filed a response, to which Father filed a reply. The parties chose to stand on their written submissions; however, at the hearing, Father continually pressed the trial court to make specific findings. The trial court heard and denied Father’s motion to reconsider and declined to re-open proofs. Father appealed

On appeal, the court found the record insufficient to allow review of the challenged orders. The court further stated that the based on the lack of transcripts and exhibits from the numerous hearings, the record was insufficient to assess the parties’ substantive arguments. Additionally, the court noted that Father’s brief was “replete with facts that are outside of the record.” Accordingly, the court found that it must presume that the orders entered by the trial court were in conformity with the law and had a sufficient factual basis based on Father’s failure to provide a complete record relating to the specific orders that he challenges in his appeal.

REIMBURSED EXPENSES

_In re Marriage of Brown_, 2018 WL 6741425 (III.App.1 Dist.), Dec. 21, 2018*

The parties were divorced in 2009. In 2015, Husband filed a petition for rule to show cause against Wife, alleging that she violated the insurance provision of the marital settlement agreement by not reimbursing him 50% of the children’s health insurance premiums. Pursuant to the judgment, Husband was to provide her with the insurance premium information two times per year. Husband did not do so. The trial court found that Wife was not in contempt of court because Husband failed to provide her with the documentation; however, Wife was still responsible for the insurance costs. Wife filed a petition for reformation and other relief, asserting that Husband never reimbursed her for insurance premiums that she had paid from the date of divorce until 2012, when Husband obtained insurance. The wording in the judgment was such that only Wife was to

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reimburse Husband and not the other way around. Husband filed a motion to strike and dismiss, and the court granted his motion, ordering Wife to pay attorney fees to Husband.

On appeal, Wife argued that she should not have to pay 50% of the insurance reimbursement because Husband failed to provide notice of the cost of the insurance pursuant to the judgment. The appellate court agreed with Wife and found that Husband was not allowed to provide documentation of the insurance whenever he desired. There were clear deadlines in the judgment. Finding these time requirements to be optional would render the purpose of the insurance provision meaningless. Therefore, the order requiring Wife to reimburse Husband for the insurance premiums paid was reversed.

Next, Wife argued that the court should not have granted Husband’s motion to dismiss Wife’s petition for reformation. The court found that the petition for reformation was, in substance, a section 2-1401 petition, because it sought relief based on alleged mutual mistake. Wife alleged that the language in the marital settlement agreement that ordered Wife to reimburse Husband 50% of the insurance premiums, should have also applied to Husband reimbursing Wife should she have to provide insurance. The court found that her petition was filed seven years after entry of the judgment. It did not allege that she was under a legal disability or duress, or that the ground for relief was fraudulently concealed. Therefore, her petition was time barred. The court found that 508(b) attorney fees were appropriate as her claims from 2009 through 2012 were disingenuous.

RELOCATION

*Boston v. Eichen, 2018 WL 401191 (Ill.App 4 Dist.), Jan. 12, 2018*

The parties had a relationship in 2009 that resulted in the birth of one child. The parties never married and ended their relationship in 2011. Both subsequently remarried. Six years later, Mother filed a petition to relocate, alleging that her husband obtained employment in Iowa that increased his earnings from $35,000 to $120,000. Mother argued that it was in son’s best interests to relocate because Mother was the primary caretaker, assisted him with his homework, took him to his medical appointments, and was confident that Iowa would have good educational opportunities for him. Father opposed the relocation for many reasons. First, Father argued that he has an incredibly close relationship with the son, that he was his “best friend” and that he was very involved in his upbringing, including being his coach for sports and attending all of his extracurricular activities. Further, the child had a close relationship with his extended family on his Mother and Father’s side, who all lived in close proximity to the son, in the same small town. Father further asserted that the relocation would damage his relationship with his son because he would only be able to see him on weekends, which would require the child to spend 24 hours in the car per month, and that the summer parenting time would not fairly compensate him for the lost time during the school year. Father argued that son was certain to continue to do well academically if he stayed in Illinois, but his success was unclear if he moved. The son would also not be able to participate in the many sports that he was involved in if the parties implemented Mother’s proposed parenting time schedule. Father also argued that he would take exceptional care of the child if he were to assume the role of primary caretaker. The court agreed with Father and denied Mother’s request to relocate. The court noted that Mother was an exceptional parent, but that the move would clearly be detrimental to the child, that his close relationship to his

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extended family was of utmost importance and that it was not in the child’s best interest to move. Mother appealed.

On appeal, the court reviewed the statutory factors that the trial court weighed in making the decision. The court upheld the trial court's ruling, finding that the court's examination of the facts was sound. Mother argued that the court unfairly favored the noncustodial parent, but the court disagreed.

_In re Marriage of Fatkin_, 2018 WL 1995624 (Ill.App. 3 Dist.), April 25, 2018**

Father filed notice of intent to relocate with children from East Galesburg, Illinois to Virginia Beach, Virginia. Mother had overnight parenting time with children 6 out of 14 days. Father wanted to move to Virginia Beach to reside with his parents, as his mother was seriously ill, which would enable children to live in a nice home in good school district, and Father would not have child care costs. Father was underemployed in Illinois and claimed he had a job waiting for him in Virginia Beach at a retail store. The trial court granted the request for relocation. The appellee court reversed and remanded, finding that the trial court's grant of relocation was against the manifest weight of the evidence. Father was voluntarily underemployed in Illinois, and he presented no evidence to the lack of similar retail jobs in Illinois as the one he found in Virginia Beach. He provided no qualitative evidence regarding his claim that the schools in Virginia Beach were superior. The children would be relocating away from their longtime friends, childhood home and Mother, who provides almost half their care. Mother has further been heavily involved in children's activities and schooling. Therefore, Mother's decision-making and parenting time would be greatly diminished or even nonexistent if Father were to relocate.

_In re Marriage of Fermin L. v. Megan S._, 2018 WL 172873-U (Ill.App. 1 Dist.), Sept. 20, 2018*

The parties were divorced in December 2012 in Maryland. The divorce was subsequently registered in Cook County, where the parties later resided. In 2014, an agreed order was entered by the trial court granting Mother's request to remove the minor children to Chile and award Father parenting time. One of the parties' minor children was found to have auditory and sensory issues, which were addressed with therapy that had positive results. However, the same issues resurfaced after the minor children visited Father in Chicago, where Mother alleged that Father frequently hit the child with the aforementioned issues in the face. Mother filed an emergency petition to restrict parenting time. Father soon thereafter filed a petition to modify parenting time, seeking to reallocate parenting time where the children would spend a majority of the time with him. The trial court granted Mother's petition to restrict parenting time. Mother filed her petition for attorney's fees and Father filed a motion to dismiss the same. The trial court denied Father's motion to dismiss and a trial was held on the issue of attorney's fees of approximately $148,000. The trial court issued a memorandum opinion and an order granting Mother's petition for attorney's fees and costs. Father filed a motion to reconsider, which was denied. The appeal followed.

On appeal, the court addressed Father's argument that the trial court erred in interpreting his conduct during the proceedings on Mother's motion to restrict parenting time as falling within the definition of "improper purpose" under section 508(b). The court found that the trial court's basis for the award was not Father's decision not to settle, but his actions, or lack thereof, that increased

* Unpublished/Rule 23(e)(1) decision.
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the time and costs of litigation. The court further found that the trial court was not restricted to
find that Father’s conduct fit within the list of examples of “improper purposes” under section
508(b). Instead, the court clarified that section 508(b) explicitly provides that the list is not limited
to those examples. Therefore, even if Father’s conduct did not constitute harassment or
needlessly increase the costs of litigation, his admitted inexcusable and self-servicing conduct fits
within the spirit of the statute and the trial court was within its authority to conclude that Father
acted with an improper purpose during the course of the proceedings.

*In re Marriage of Flournoy, 2018 WL 180568-U (Ill.App.2 Dist.), Oct. 17, 2018*

The parties were married in 2001 and had three children. Mother’s eventual discovery of the
existence of Father’s child from another relationship (during the parties’ marriage) apparently led
to the breakdown of the marriage. During the divorce proceedings, Mother lost her job and was
unsuccessful in finding employment in the greater Chicago area, where the parties resided. In
2016, a judgment for dissolution of marriage was entered, which incorporated a marital settlement
agreement and agreed allocation judgment. The allocation judgment provided for shared parental
responsibilities and joint responsibility for major decision making. In January 2017, Mother
received an offer for a vice president of human resources position in North Carolina. Father
refused consent to Mother to permanently relocate the minor children, and Mother filed a petition
to relocate. A hearing was not held until May 2018, by which time Mother had moved to North
Carolina and the minor children were residing with Father (who was renting an apartment so that
the minor children could continue to remain in the same school district). During the hearing, the
children’s Guardian ad litem recommended denying Mother’s relocation petition, citing that
Father’s relationships with the children would be impacted in a substantial, negative way if they
were to move to North Carolina. The children had expressed different sentiments at different
points about whether they wanted to move to North Carolina, but they did not testify. In July 2018,
the trial court denied Mother’s relocation petition and Mother appealed.

On appeal, the standard of review was whether the trial court’s decision was against the manifest
weight of the evidence. Mother alleged that the trial court improperly weighed her anger toward
Father against the other statutory best-interest factors. The court noted that the circumstances
in petitions to relocate are evaluated on a case-by-case basis, and that some factors to consider
(under Section 609.2(g)) may weigh more heavily than others. The court found that the trial court
was “appropriately concerned” that Mother would use the children’s relocation as an opportunity
to minimize their relationship with Father. The court further noted that the trial court considered
all of the statutory factors and that the trial court’s decision was not against the manifest weight
of the evidence.

*Kara B. v. James L., 2018 WL 180491-U (Ill.App. 4 Dist.), Dec. 17, 2018*

Mother sought relocation to Colorado with the parties’ minor son, M.L., alleging that her husband
had obtained a better job. The trial court found that relocating to Colorado would not be in M.L.’s
best interest and Mother appealed. The standard of review is a trial court’s determination of what
is in the best interests of the child should not be reversed unless it is clearly against the manifest
weight of the evidence and it appears that a manifest injustice has occurred. The court considered
each factor under Section 609.2(g) in its review, finding that the trial court’s decision to deny

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Mother’s petition to relocate was against the manifest weight of the evidence. The court explicitly stated that “[i]f the Court’s reasoning was correct, no petition to relocate would ever be successful.” In its analysis, the court first noted that the statute does not require a new out-of-state job to be “overwhelmingly” superior to employment prospects in Illinois. Here, the evidence showed that Mother’s husband did search for and apply for seven positions in Illinois before applying to the position in Colorado. Next, the court noted that the trial court may not subordinate Mother’s interests to those of Father (the noncustodial parent). The court further found that the trial court’s conclusion that relocation would significantly impact Father’s relationship with M.L. was speculative, in light of Father’s history of failing to attend extracurricular activities. The court noted that the parents in this matter have a history of working together on decision making, and distance should not affect Father’s involvement in same. Mother had argued at trial that her bond with M.L. was stronger than that of Father’s with M.L. The court found that the trial court failed to give appropriate consideration of the impact of that bond between Mother and M.L. on M.L.’s best interest. Instead, the trial court erred in weighing the history and quality of each relationship with the child factor evenly. Next, the court found that a petitioner need not prove that the educational opportunities where he intends to relocate are overwhelmingly better than those in Illinois. Instead, a petitioner need only prove by a preponderance of the evidence that the educational opportunities are in the child’s best interest. Next, the court found that trial court improperly speculated that relocation would impact M.L.’s ability to develop a relationship with his paternal grandparents in Illinois, where M.L. would have the presence of extended maternal family in Colorado. Finally, the court found that the trial court improperly considered a decrease in Father’s amount of visitation, despite finding that it could determine a reasonable visitation schedule and that Mother would actively foster a relationship between M.L. and Father.

_McIntire v. Natasha Johnson_, 2018 WL 4523927 (Ill.App. 3 Dist.), Sept. 19, 2018

The trial court’s denial of Mother’s petition for relocation was not against the manifest weight of the evidence. The parties were never married and had a child together. Mother was allocated the majority of the parenting time. While Father was granted parenting time every other weekend, he only saw the child for six hours during his parenting time. Father filed a motion to relocate, alleging that her husband would have better job prospects in Colorado and that the schools were better in Colorado. The trial court denied the motion, noting that the court could not parse out Mother’s real motivation for moving due to her inconsistent testimony.

While Mother attempted to argue that the reason for the move was financial, when confronted, it became clear that she also wanted to move because she could easily obtain medical marijuana for her health issues. It was also clear that Mother and her husband had separated only to reconcile one month before Mother filed her motion. Further, Mother would have no family support in Colorado, and she heavily relied upon her family in Illinois. Therefore, relocation was not in the best interest of the minor child.

_In re Marriage of Noyes_, 2018 WL 485979 (Ill.App. 2 Dist.), Jan.18, 2018

The parties were married in 2006. One daughter was born to the parties in 2008, and a second daughter was born to the parties in 2010. Husband filed a petition for dissolution of marriage in 2013. In 2013, a judgment for dissolution of marriage and custody judgment was entered. Pursuant to the custody judgment, the parties were to share legal custody with Wife being the

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primary residential parent. Between July 2014 and October 2016, Wife filed three petitions to restrict Husband’s parenting time and two ex parte emergency orders of protection. In 2015, a GAL was appointed. In 2016, an agreed order modifying Husband’s parenting time was entered. Later in 2016, Wife filed a petition for relocation. Wife voluntarily withdrew the petition, but refilled it in 2017. As grounds for relocation, Wife stated that she desired to move to Ohio to be with her current husband and his four children, and so that she could better provide for her children financially and improve their environment. Wife argued that Husband was inconsistent with his parenting time, and his parenting style was erratic, including multiple instances of abuse. In 2017, Wife also filed a petition to modify allocation of parental responsibilities, wherein she requested that she be allocated significant decision-making authority, which she later voluntarily withdrew.

After considering section 609 of the Act, the trial court considered whether the relocation would be in the best interests of the children based upon the factors contained therein. Factors that were not in favor of the relocation were that the court found the educational opportunities for the children were equal in Illinois and Ohio. The court also found that the relocation would have an immediate difficult impact on the children adjusting to new schools, friends, activities and medical providers. Regarding minimizing the impairment between Husband and children’s relationship, although Husband and the children could use alternate technology (email, text, etc.) to communicate, the parties were not on good terms with one another. Further, Wife married her new spouse knowing he resided in Ohio. As for factors that were in favor of the relocation, the court looked at the children’s contact with extended family, and found that the relocation would not have an effect. Further, the parties did have flexible work schedules, which could accommodate travel. The trial court did not have any evidence to indicate the wishes of either child. The trial court found Husband’s reasons for objecting to the relocation to be “clear and honest” and that Husband “legitimately fears that he will miss the consistent and continual physical contact with the minors if there is relocation”. Husband was involved with the children as his work schedule allowed, for example, coaching the children’s’ sports team, attending weekday activities for the children, and participating in school events. As such, the trial court denied Wife’s petition for relocation. The testimony of the GAL was barred; the trial court entered the report as an offer of proof. Wife appealed.

The appellate court found that the trial court conducted a thorough hearing and heard extensive testimony regarding the proposed relocation, and affirmed the decision of the trial court. The appellate court found that the trial court did not err in barring the GAL’s report and testimony pursuant to section 607.6 of the Act, as the only communications the GAL had with the minor children occurred in counseling.

Reyes v. Reyes, 2018 WL 5298730 (Ill.App.2 Dist.), Oct. 22, 2018*

The trial court’s decision granting Mother’s petition to relocate to Texas with the parties’ son was not against the manifest weight of the evidence. The parties had separated prior to the birth of the child and were divorced when he was two years old. The child was nine years old. Both parents had remarried and had children of the new marriage. Mother had sole custody of the child and lived in Minooka. Father lived in Chicago and saw the child every other weekend. Because of the distance (60 miles), he was unable to have weekday visits.

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Mother’s husband accepted a new job based out of Texas. It was not a requirement for him to move to Texas, but he was spending the majority of his time in Texas, essentially making the Mother a single mom of three. Prior to obtaining the job based out of Texas, Mother’s Husband had coached the child’s soccer team, attended all extra-curricular activities, and had a very close relationship with the child. The move would allow Mother’s family to live under one roof. The appellate court found that although Father raised several compelling points, the standard of review does not contemplate factor-by-factor dissection of the court’s findings. Rather, the appellate court considers whether the court’s balancing of all factors, with no one factor controlling, reflects that the opposite conclusion is clearly apparent. The court may not reweigh the factors.

*In re Marriage of Steen*, 2018 WL 4504161 (Ill.App. 2 Dist.), Sept. 18, 2018*

The parties married in 2012 and had one child. The parties resided in Ohio and both parties had extended family there. In 2013, the parties moved to Chicago because Husband’s children from a previous relationship resided there. Wife was able to continue at her employment by working remotely and traveling to Ohio on occasion. In 2015, Husband filed a petition for dissolution of marriage. Also, in 2015, Wife filed a petition to relocate with the child back to Ohio which was denied. A parenting schedule was entered giving the parties joint decision-making authority. Husband was allocated parenting time every other weekend and for a few hours one night per week. In 2018, Wife filed a petition to relocate to Ohio. Wife had applied for and received a promotion at her work, which required her to move back to Ohio. If Wife did not accept the promotion her current job would be eliminated. A guardian ad litem was appointed, who recommended that Wife and child not relocate. The trial court denied Wife’s petition to relocate. The trial court found that relocation would strain the child’s relationship with her Father, and that Wife had not made any attempts to find other jobs in the Chicagoland area.

Wife filed a motion to reconsider. The trial court denied the motion to reconsider, and in doing so, stated that if this were a case based on emotion or what was fair, that there very well may have been a different ruling. The trial court stated that it must follow the case law and the statute as it relates to relocation.

The appellate court reversed the decision of the trial court and remanded the case for modification of the allocation of parental responsibilities in light of relocation. The appellate court found that the trial court’s decision was against the manifest weight of the evidence. The appellate court found it critical that the trial court found the child’s best interests continued to lie with Wife as primary caretaker. Further, Husband never moved to modify the allocation of parental responsibilities to become primary caretaker. The appellate court found that the trial court’s ruling could result in the primary caretaker being unemployed. The case did not present a particularly unusual or unworkable relocation situation that demanded denial of relocation. The move to Ohio was a five-hour distance, which was no different than various moves could be within Illinois.

*In re Marriage of Stimson*, 2018 WL 1308880 (Ill.App. 4 Dist.), March 12, 2018*

A judgment for dissolution of marriage and incorporated joint parenting agreement were entered in 2008. The parties had two daughters, J.S. and C.S. In 2015, Mother remarried and relocated.

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to North Carolina without leave of court. In 2016, Mother filed a notice of intent to relocate with the minor children. A Guardian ad Litem was appointed. Upon learning of the possibility of reuniting with her Father, J.S. became suicidal and was admitted to a hospital. J.S. alleged that she remembered sexual abuse by Father during her hospital treatment. Orders of protection against Father were filed and dismissed. The doctor’s deposition was taken and a report was submitted to the court. After hearing testimony, the trial court denied Mother’s motion for relocation, finding that she was an unhealthy influence and did not facilitate a relationship between Father and the parties’ children. The trial court also found that Father was not particularly nurturing. Regarding Father’s motion for modification of parenting time and decision-making responsibility, the trial court concluded that the relationship between J.S. and her Father was “irretrievably broken”. For the time being, the trial court recommend J.S. stay with her Mother. The trial court determined C.S.’s best interest would be served by being placed with her Father, and recommended counseling. The trial court reserved the issue of Mother’s parenting time for the time being.

Mother filed an appeal. The appellate court affirmed the decision of the trial court. Further, the distance between Father and the children would not help repair the relationship. The appellate court found that the trial court properly determined it was in C.S.’s best interests to modify parenting time and decision-making responsibility in favor of Father, and reserve Mother’s parenting time for the time being due to the unhealthy influence Mother and J.S. had over C.S.

*In re Marriage of Williams, 2018 WL 6163384 (Ill.App. 5 Dist.), Dec. 27, 2018*

A judgment for dissolution of marriage was entered on May 23, 2014, wherein both parties were awarded the joint care, custody and control of the two minor children. Mother was the primary residential custodian. Father had parenting time every other weekend and one overnight per week. In 2015, Mother filed a petition pursuant to section 609 of the Illinois Marriage and Dissolution of Marriage Act (IMDMA) seeking to relocate with the minor children from Illinois to North Carolina. Father did not agree to the relocation. A guardian ad litem (GAL) was appointed, who concluded that the relocation should be granted. The GAL found that Mother was the primary caretaker for the minor children and was responsible for their day-to-day care, Mother would be happier in North Carolina with her new spouse and would have better employment opportunities, the children would benefit from the living environment in North Carolina, and that the children would have ample opportunities to visit with Father after the move. The trial court granted the relocation based on the factors set forth in section 609.2 of the IMDMA, stating the relocation was in the best interests of the children. The trial court implemented a parenting schedule providing Father with extended holiday and summer parenting time.

Father filed an appeal. The appellate court reviewed the trial court’s findings and found that the trial court’s conclusion granting the relocation was not against the manifest weight of the evidence. The appellate court found that the trial court gave a careful and thorough consideration to all the evidence presented and in light of the factors relevant to the children’s best interests.

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RESTRICTION OF PARENTAL RESPONSIBILITIES

*In re Marriage of Mayes, 2018 WL 180149 (Ill.App. 4 Dist.), Sept. 4, 2018**

The parties were married and had two children. When filing her petition for dissolution of marriage, Mother also filed for temporary relief. The trial court entered a temporary order granting Mother temporary custody and allowing Father visitation. That same month, Mother filed for an order of protection. The trial court entered an *ex parte* order of protection and consolidated the order of protection and divorce cases. In January 2011, Father filed a motion to establish a provider for supervised visitation. After hearings on the same, the trial court granted Father’s motion and appointed a supervisor. On the same day in November 2011 as the hearing on the dissolution petition, the trial court entered a plenary order of protection including the parties’ two minor children. In April 2012, the trial court entered a dissolution judgment, ordering, in part, Mother full custody of the two minor children and supervised visitation for Father. In September 2012, Father appealed from the judgment, arguing the trial court erred in ordering supervised visitation. The appellate court rejected the same. In February 2014, the trial court entered an order dismissing the November 2011 order of protection and providing for a gradual transition from supervised to unsupervised visitation. In October 2017, Mother filed an emergency motion under 750 ILCS 5/603.10(a) seeking to restrict Father’s parenting time. Father filed a motion to dismiss, which the trial court denied. At a hearing on Mother’s emergency motion, the trial court heard testimony on three separate incidents and the impact the said incidents had on the two minor children. Following the hearing, the trial court granted Mother’s emergency motion. Father appealed.

In its analysis, the appellate court found that, under section 603.10(a), restricting parental responsibilities is a two-step process. First, the trial court must make a factual determination whether the preponderance of the evidence demonstrates the parent has “engaged in any conduct that seriously endangered the child’s mental, moral, or physical health or that significantly impaired the child’s emotional development.” Next, if the trial court finds sufficient evidence to make such a determination, it must then enter orders necessary to protect the child. Further, the appellate court stated that the standard of review for a trial court’s factual determination here is whether the opposite conclusion of the trial court is clearly evident upon review of the entire record. Here, the appellate court found that Mother presented sufficient evidence whereby the trial court could find that the serious endangerment standard was met. The appellate court further found that based on the evidence presented, the restrictions that the trial court placed on Father’s time did not result from an abuse of the trial court’s discretion. Accordingly, the appellate court affirmed the trial court’s judgment.

RETIREMENT BENEFITS

*In re Marriage of Cokinis, 2018 WL 6735408 (Ill.App. 3 Dist.), Dec. 21, 2018*

The parties were divorced in 2011. Pursuant to the marital settlement agreement, the parties agreed to equally divide Husband’s pension. Prior to his retirement, Husband was injured in the line of duty and found disabled by the pension board. He began receiving disability pension benefits at a rate of 65% of his salary. He was 49 years old when he was injured and eligible to retire at the age of 50 and receive 50% of his salary in retirement benefits. However, Husband elected to continue the disability payments instead of applying for early retirement. By electing to

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do so, Husband would have to wait until age 57 to retire with full benefits which would be 75% of his salary. Wife filed a motion, claiming that she was entitled to a portion of Husband's disability benefits as of the date that he was eligible to retire (when he turned 50). The trial court denied the motion, finding that the disability benefits received by Husband were meant to replace his regular income and that Wife would only be entitled to the benefits when he retired.

On appeal, the court found that when a disabled spouse is not yet eligible for retirement pay, a marital settlement agreement entitling the ex-spouse to "retirement" benefits should not be interpreted to grant her a share of her ex-husband's disability income. However, when an ex-spouse is entitled to receive retirement pay and is receiving disability income instead, a settlement agreement providing the ex-spouse be paid the percentage of what would be normal retirement benefits may be reasonably interpreted as requiring that the ex-spouse be paid the percentage of what would be normal retirement benefits, whether the respondent is paid normal benefits or disability benefits. The court found that under the circumstances in this case, Husband's disability benefits are replacement income, not substitute retirement benefits. Husband should not be forced to retire early and limit his retirement benefits.

RIGHT OF FIRST REFUSAL

See also ALLOCATION OF PARENTING TIME AND RESPONSIBILITIES, Alana J. v. James J., 2018 WL 1036978 (Ill.App. 3 Dist.), Feb. 21, 2018*

SANCTIONS

In re Marriage of Szczepanczyk, 2018 WL 172047-U (Ill.App.1 Dist.), Oct. 5, 2018*

Husband filed a petition for dissolution or marriage and allocation of parental responsibilities. In December 2016, Wife was served with interrogatories and requests for production, which she did not answer. Husband’s counsel sent a 201(k) letter in June 2017 and an agreed order resetting the discover deadline was entered in July 2017. Wife failed to tender discovery by the new agreed upon discovery deadline. Husband subsequently filed a motion to compel. Meanwhile, Wife failed to appear for her scheduled deposition. In September 2017, the circuit court entered ordered Wife to fully comply with discovery requests by September 28, 2017 and appear for her reschedule deposition. The order further stated that Wife would be barred from presenting evidence, testifying, or calling witnesses at trial if she failed to fully comply with said order within 14 days. Wife then tendered a witness disclosure list with more than 80 entries, most of which were vague and some that did not even identify witnesses by name. On September 28, 2017 (the discovery deadline), Wife tendered to Husband’s counsel a box of unlabeled and unorganized papers, two flash drives, and largely incomplete, handwritten answers to interrogatories. She did not show up for her rescheduled deposition. In response to Wife’s actions, Husband filed an emergency motion seeking sanctions pursuant to Supreme Court Rule 219(c), to which the circuit court struck all previous and later filed pleadings by Wife. The circuit court allowed the matter to proceed to trial but barred Wife from presenting evidence or calling witnesses. After a bench trial, the circuit court entered a written order granting Husband’s petition for dissolution and awarded him full parental responsibilities. Wife appealed.

On appeal, the court found that Rule 219(c) authorizes a trial court to impose a sanction “upon any part who unreasonably refuses to comply with any provisions of this court’s discovery rules

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or any order entered pursuant to these rules.” The court further found that the trial court did not abuse its discretion by striking the Wife’s pleadings and by barring her from presenting evidence or calling witnesses at trial, thus affirming the circuit court’s Rule 219 sanctions and judgment.

See also MAINTENANCE, In re Marriage of Spielmann, 2018 WL 5896587 (III.App. 1 Dist.), Nov. 7, 2018*

See also TRUSTS, In re Marriage of Larocque, 2018 WL 2440675 (III.App. 2 Dist.), May 31, 2018**

SUBSTITUTION OF JUDGE

In re Marriage of Baumgartner, 2018 WL 180022 (III.App. 4 Dist.), June 6, 2018*

In March 2017, Wife filed for petition for dissolution of marriage. She subsequently filed a petition for temporary relief, followed by a motion for default judgment. A hearing was set for July 5, 2017. On July 5, 2017, before the hearing on Wife’s motion for default judgment, Husband filed a pro se motion for change of venue. The hearing on Wife’s motion proceeded and after confusion ensued regarding the pro se Husband’s wishes, the trial court continued the matter until August 3, 2017.

On August 2, 2017, Husband refiled his motion for change in venue. Proceedings were held the following day on both the pending order of protection and divorce cases. The trial court agreed to combine both cases into one hearing. After considerable chaos, the trial court entered the default judgment dissolving the marriage. The court also allocated property and ordered child support; reserved the issue of parental responsibilities and parenting time; and denied Husband’s motion to modify the order of protection. Husband appealed.

On appeal, Husband argued that the trial court erred by not granting him his right to substitution of judge. The parties did not dispute that the trial court had not yet ruled on a substantial issue in the case prior to receiving Husband’s motion for change of venue. Instead, the question resolved by the appellate court was whether Husband, appearing pro se, requested substitution of judge. The appellate court found that the trial court erred in not ordering substitution of judge and that any doubt as to Husband’s intent was resolved when he refilled his motion for change of venue. The appellate court further held that the trial court erroneously granted a default judgment before granting Husband’s motion for substitution of judge, thereby reversing and remanding the matter for further proceedings.

In re Marriage of Peradotti, 2018 WL 4376870 (III.App. 2 Dist.), Sept. 14, 2018**

During the course of the dissolution of marriage proceedings, Husband filed a petition to substitute Judge Salvi. Wife was represented by Beerman Pritikin Mirabelli Swordlove LLP (hereinafter “Beerman”). The judge’s nephew was an attorney at Beerman. Judge Salvi orally recused himself. Twelve days later, the matter came before the court for pretrial conference. At that time, Judge Salvi orally stated that he had researched case law, spoke with the Chief Judge and that

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he was not obligated to recuse himself and therefore was not recusing himself. The petition for substitution was assigned to Judge Winter for decision. Judge Winter found the issue problematic, as there was no written recusal order in the file. Judge Winter denied the petition for substitution, finding that Husband failed to meet the “actual prejudice” standard.

Husband filed an appeal. The appellate court reversed the denial of Husband’s petition for substitution of Judge Salvi. The appellate court vacated all substantive rulings, including the dissolution judgment, and remanded the case for reassignment to another trial judge for disposition. Pursuant to Illinois Supreme Court Rule 63(D), once a judge recuses himself, he loses authority over a case and can only be reinstated through a remittal from the parties. That did not happen in this case. Further, the appellate court found that the criterion under Illinois Supreme Court Rule 63(C)(1) is whether the judge’s impartiality might be reasonably questioned. This included, but is not limited to, situations involving the appearance of impropriety.

See also ORDER OF PROTECTION, Padilla v. Kowalski, 2018 WL 3244835 (III.App. 4 Dist.), June 28, 2018*

See also ORDER OF PROTECTION, Tucker v. Kerton, 2018 WL 6015756 (III.App. 2 Dist.), Nov. 14, 2018*

SUMMARY JUDGMENT

See also TRUSTS, In re Marriage of Larocque, 2018 WL 2440675 (III.App. 2 Dist.), May 31, 2018**

SUPREME COURT RULE 304(a) PLENARY ORDER OF PROTECTION

In re Marriage of Sanchez and Sanchez Ortega, 2018 WL 171075 (III App. 1 Dist.), March 23, 2018**

A petition for dissolution of marriage was filed in August 2008. Throughout the dissolution proceedings, issues relating to abuse and visitation arose, and in October 2008, an order of protection was entered against Husband that protected Wife and the parties’ two minor children. The order of protection remained in effect, and in in 2010, the trial court suspended Husband’s supervised parenting time with the children. In April 2011, following a trial, the court entered a judgment for dissolution of marriage, which required Husband to pay $785.00 per month for child support and entered a judgment against him for $11,775.00 as and for child support arrearages. The judgment provided Wife and the minor children with a two-year plenary order of protection, which was to terminate in April 2013.

Husband filed an appeal after the trial court denied his motion to reconsider the dissolution judgment or, in the alternative, to re-open proofs. The judgment for dissolution was affirmed after finding that Husband failed to adequately support his arguments in his brief. In June 2016, an amended order of support was entered, requiring Husband to pay $550.00 per month as and for child support, as well as $100.00 per month towards the $42,503.30 in child support arrears. Wife later moved to extend the order of protection, and in October 2016, the trial court entered a subsequent plenary order of protection, which suspended Husband’s communication with Wife

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and parenting time and communication with the minor children until further order of the court. Also, in October 2016, the Department filed a petition for rule to show cause against Husband, alleging that he willfully failed to make the child support payments that were ordered in June 2016. In response, Husband filed a motion for abatement or for suspension of the child support payments, stating that he was unemployed as he was unable to pay the renewal fee for his contractor’s license and that his driver’s license has been suspended for failure to pay child support. In November 2016, Husband also filed a motion to vacate the plenary order of protection. In February 2017, Husband’s motion to abate child support was denied, and he was granted leave to file a motion to modify child support. Instead, in March 2017, Husband filed a motion to vacate the denial of his motion to abate child support payments, arguing he was entitled to “judgment by default” because the Department did not file its response per court order. In April 2017, the trial court denied with prejudice Husband’s motion to vacate the abatement of child support, as a full hearing had been conducted on the issue with both parties present. The trial court also denied Husband’s motion to vacate the plenary order of protection with prejudice.

In May 2017, Husband filed an appeal regarding both issues. The appellate court dismissed the appeal from the order denying the motion to reconsider the denial of the motion to abate child support payments, as the court lacked appellate jurisdiction. The appellate court noted that per Illinois Supreme Court Rule 304(a), Husband had neither been sanctioned nor committed with respect to the contempt petition, and thus the contempt order was not final or appealable. The appellate court affirmed the order denying the motion to vacate the plenary order of protection. A decision as to whether to dissolve an injunctive order is reviewed for an abuse of discretion. The appellate court found that Husband did not present a sufficient record for the appellate court to determine whether the trial court abused its discretion in denying the motion to vacate the plenary order of protection.

**TEMPORARY RESTRAINING ORDER**

_In re Marriage of McDonald, 2018 WL 180326-U (III.App. 2 Dist.), Sept. 6, 2018*

The parties’ marriage was dissolved in 2008 and a modified judgment was entered in 2009. That judgment was appealed (in a separate case appeal than the present), which was affirmed in part and vacated in part, and remanded. As a result, numerous issues remained as to the distribution of the marital estate. In November 2017, Wife filed an emergency petition for a temporary restraining order (“TRO”) and preliminary injunction regarding a Bank of America safe deposit box in Husband’s name, the existence of which she had recently discovered. An _ex parte_ hearing was held the same day, and a hearing was held later that month, resulting in granting the parties 14 days to conduct an inspection and inventory of the box contents. The parties returned twice in December 2017 (on this pending proceeding and others), both of which resulted in continuations of this particular issue. In January 2018, an order was entered stating that, upon good cause found by the trial court, the November 2017 TRO would remain in effect until the hearing on the preliminary injunction. Over the following two months, both parties filed various motions regarding Husband’s alleged privilege over the contents of said box. In February 2018, the trial court heard all of the related motions and petitions. An order was issued giving instruction to Wife’s attorney and the bank to set a date for the removal of the box contents “as soon as possible” and the contents should be sent directly to the trial court for inspection. In March 2018.

* Unpublished/Rule 23(e)(1) decision.
** Not released for publication in the permanent law reports.

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Husband filed a motion to vacate the February 2018 order. He alleged that the ex parte November 2017 TRO had been improperly extended six times and had become, in effect, a preliminary injunction entered without a hearing. Wife responded to the motion and a conference was held, which resulted in the trial court denying the motion to vacate. Husband filed his notice of appeal.

On appeal, the court first noted that a party need not appeal a TRO or injunction immediately or else risk all right to challenge that injunction, because Rule 307 allows parties to seek a later dissolution of the injunction and then to immediately appeal the denial of that relief.

Next, the court addressed the Husband’s argument that the trial court erred in denying his motion to vacate because its repeated extensions transformed the November 2017 TRO into a preliminary injunction. The court found that the trial court had properly set a prompt date for the hearing on the preliminary injunction. The court further stated that the repeated delays were primarily because of Husband’s efforts to prevent the parties from entering and inventorying the contents of the safe deposit box. Because Husband himself “thwarted” the trial court’s efforts to obtain the information about the safe deposit box so that the preliminary injunction hearing could proceed in a prompt fashion, the court found that the trial court did not abuse its discretion in denying his motion to vacate.

TERMINATION OF PARENTAL RIGHTS

In re Adoption of Pounders, 2018 WL 3326673 (Ill.App. 4 Dist.), July 3, 2018*

S.R. was born in 2005. S.R.’s biological Mother had an adoptive Mother (hereinafter referred to as “Grandmother”). In 2016, Grandmother filed a petition to adopt S.R., alleging that Mother’s parental rights should be terminated as she abandoned S.R. A fitness hearing was conducted in November 2017. Grandmother was 71 years old. S.R. was 12 and had been in Grandmother’s care since she was four or five months old. In August 2014, Mother had agreed to terminate her visitation rights. Mother had not seen S.R. since a birthday party in 2015 and had no interaction with her at that time. Mother testified that it was never her intention for S.R. to remain in Grandmother’s care, and then she felt “pushed in a corner” by Grandmother. The trial court found Grandmother credible, Mother not credible and found Mother to be unfit. In January 2018, the court conducted the best-interest hearing. The trial court found that Mother failed to maintain a reasonable degree of interest, concern or responsibility to S.R.’s welfare, that S.R. had resided with Grandmother most of her life and that Mother gave up her right to visit S.R. in August 2014. The court concluded it was in S.R.’s best interest that Mother’s parental rights be terminated.

Mother appealed. The appellate court affirmed the decision of the trial court terminating Mother’s rights. The Adoption Act provides that a parent’s consent to adoption is not required when, among other reasons, the parent is found by the court to be an unfit person. Unfitness must be proven by clear and convincing evidence. The evidence indicated that S.R. was in a good home and that her needs were being met. S.R. spent most of her life with Grandmother, and her sense of security, familiarity and need for performance were best served by remaining with Grandmother. Terminating Mother’s parenting rights was not against the manifest weight of the evidence, and was in the best interests of S.R.

* Unpublished/Rule 23(e)(1) decision.
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TRUSTS

In re Marriage of Larocque, 2018 WL 2440675 (Ill.App. 2 Dist.), May 31, 2018**

The parties were married in 1985. Husband was a trader and investor, and Wife was a homemaker. The marital estate was valued to be more than $21 million. In dispute was whether the assets held in certain irrevocable trusts were also a part of the marital estate. Wife argued that Husband depleted the marital estate by transferring large sums of money into the trusts, and that it was part of Husband’s divorce planning scheme. Husband argued that the trusts were outside of the marital estate, and that the trusts were to transfer the monies to the parties’ children upon the parties’ deaths. The trial court granted Husband’s motion for summary judgment, ruling that the assets therein were not part of the marital estate. The trial court determined that Husband used the trusts as his personal “piggy bank”. Husband always repaid the loans plus interest. The trial court found no case law supporting that estate planning for the benefit of the parties’ children was tantamount to diminishing the marital estate. The trial court divided the estate equally between the parties. Wife was awarded permanent maintenance in the amount of $30,000 per month.

Wife appealed, arguing the trial court erred in granting summary judgment to Husband and failing to rule that the marital estate had been depleted. The appellate court found that the trial court properly granted summary judgment with respect to the trusts. Husband presented six (6) affidavits establishing the trusts were valid and that he conveyed the assets to the trusts with donative intent. Husband demonstrated the trusts were funded as a party of a comprehensive estate plan designed to provide an orderly disposition upon the parties’ deaths while minimizing exposure to estate taxation. Wife never disputed the trusts were valid and distinct legal entities. There was no evidence the trustees breached their fiduciary duties. The appellate court further found that there was no evidence that Husband contributed unusual amounts of money to the irrevocable trusts in anticipation of divorce proceedings.

The trial court had also issued a $50,000 fine against Wife’s attorney for discovery misconduct. In an appeal filed by Wife’s attorney, the appellate court found that the trial court did not abuse its discretion in sanctioning Wife’s attorney $50,000, wherein Wife’s attorney allowed an accounting firm to inventory discovery documents. Wife’s attorney then insisted certain documents were not produced, when in fact, Husband had produced same.

503(g) TRUST

See also DISSIPATION, In re Marriage of Arkin, 2018 WL 3374921 (Ill.App. 3 Dist.), July 9, 2018**

UNALLOCATED SUPPORT

In re Marriage of Caren v. Drimmer, 2018 WL 170723-U (Ill.App. 1 Dist.), Sept. 18, 2018*

The parties were married in January 1993 and had two minor children. The trial court entered a judgment dissolving the marriage, which included marital settlement (“MSA”) and custody agreement. The MSA provided, in pertinent part, for unallocated support payments from Husband

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to Wife that would end in July 2016, at which time future child support payments would be
determined.

In 2013, Husband filed a petition to find Wife in contempt, a motion to enforce the dissolution
judgment, and a motion to modify the judgment due to a substantial change in circumstances.
Husband alleged that Wife failed to pay her half of expenses as ordered by the MSA, in addition
to arbitrarily refusing to give her consent for minor children’s expenses and refusing to gain
meaningful employment. In 2014, Wife petitioned for a rule to show cause why Husband should
not be held in contempt for failing to share 50% of his income with her. Wife filed a second
contempt petition based on Husband’s alleged failure to tender half of a “bonus” he received from
an employer. She also filed a motion for a declaratory judgment and a complaint for breach of
contract. Multiple-day hearings were held on the pending issues. The trial court would later find
Wife’s testimony to be often evasive and defensive. As a result of the hearings, the trial court
ordered that (1) Husband’s failure to tender 50% of his income did not excuse Wife’s lack of
contribution toward the minor children’s expenses and found her contrary position to be absurd,
unreasonable, and taken in bad faith; (2) Husband was granted the sole decision-making power
as to the remaining minor child’s future expenses; (3) Wife’s monthly child support payments were
reduced; (4) monthly maintenance payments were set; (5) both parties’ contempt petitions were
denied; and (6) Husband was granted leave to file a fee petition. After the trial court’s ruling, Wife
filed a motion to reconsider and asked the trial court to reopen proofs to present evidence of the
parties’ most recent financial circumstances, which the trial court denied. Wife appealed on all
issues in the trial court’s ruling.

On appeal, Wife first argued that the trial court erred in holding that statutory interest on unpaid
allocated support did not begin to accrue until the trial court entered its ruling. The court found
that Wife’s brief did not specify when she believed that interest did begin to accrue. The court
stated that the crucial matter is determining when a given payment became overdue, and that
determination depends on whether the proceeds at issue were an income or bonus (a distinction
which Wife was found to overlook). The court found that Wife’s contention was forfeited.

As for the issue of modification of unallocated support, it should first be noted that the court
admonished counsel for a misrepresentation of the trial court’s findings in the Wife’s brief.
Regarding the modification, the court stated that a trial court must consider all of the factors found
in sections 504(a) and 510(a-5) of the IMDMA in deciding whether to terminate or reduce
unallocated maintenance and support.

As to Wife’s employment, the court found that her failure to make a good faith effort to work, much
like her lack of communication, undermined the entire post-dissolution scheme designed by the
parties. In regard to maintenance payments from Husband to Wife, the court found that Wife did
not have an absolute right to maintenance. In particular, the Wife argued that the trial court was
required to consider every factor under section 504(b-2). However, the court found instead that
the trial court is to consider each relevant factor. The court further stated that Wife, on appeal,
failed to identify any particularly relevant factor that the court did not consider.

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Next, the court considered Wife’s contention that the trial court erred by refusing to reopen proofs. The court pointed to the fact that Wife did not make an offer of proof as to what specific evidence she would tender if proofs were reopened.

Finally, as for attorney’s fees, the court found that the trial court reasonably awarded fees to the Husband because Wife needlessly increased litigation by failing to fulfill her obligations as a co-parent under the provisions contained in the parties’ judgment.

*In re Marriage of Stranyak*, 2018 WL 540277 (Ill.App. 2 Dist.), Jan. 23, 2018*

Husband and Wife were married in 2007 and had one child. Husband founded a construction company and Wife was a homemaker. The household living expenses of the parties during the marriage were $19,200 per month. Wife filed a petition for dissolution of marriage and Husband was ordered to pay temporary unallocated support of $3,000 per week during the pendency of the divorce. Husband filed a petition to modify support stating that his business was failing, and support was abated (not reduced) to $1,000 per week, and was then again later abated to $516 per week. On November 9, 2016, the court delivered its judgment for dissolution of marriage, and ordered maintenance from Husband to Wife in the amount of $1,750 per month. Husband was ordered to take steps to maximize his income to historic levels prior to a review on January 1, 2018. Husband was to pay Wife $608 per month in child support. The court held that on November 1, 2017, it would impute income of at least $300,000, thereby increasing monthly child support to $3,079. On January 23, 2017, the court heard arguments on post-trial motions. The court found the original order for unallocated temporary support was to have remained in effect until May 1, 2015, when the construction company truly stopped operating. The court order provided that support arrearages accrued at the rate of $3,000 per week from June 19, 2014 to May 1, 2015; from May 1, 2015 until November 9, 2016, unallocated support accrued at the rate of $544.15 per week. After the offset of payments made, Husband was to pay arrearages of $85,755 for principal and $13,711 in interest. Husband filed an appeal.

The appellate court affirmed the decision of the trial court, stating that the trial court’s finding that Husband voluntarily reduced his income in bad faith was not against the manifest weight of the evidence. The appellate court further found that the trial court’s decision to impute income in setting of child support was not an abuse of discretion.

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Dealing with Parental Alienation in Family Law Proceedings

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Parental Alienation Defined

• **Parental alienation** is the process, and the result, of *psychological manipulation* of a child into showing unwarranted fear, disrespect or hostility towards a parent and/or other family members.\[1\][2][3][4][5] It is a distinctive form of psychological abuse and family violence\[6][7][8][9][10], towards both the child and the rejected family members\[11][12], that occurs almost exclusively in association with family separation or divorce, particularly where legal action is involved.\[13][14][15] The most common cause is one parent wishing to exclude the other parent from the life of their child, though family members or friends, as well as professionals involved with the family (including psychologists, lawyers and judges), may contribute to the process.\[2][16][17] Parental alienation often leads to the long-term, or even lifelong, *estrangement* of a child from one parent and other family members\[18][19] and, as a significant *adverse childhood experience* and form of *childhood trauma*, results in significantly increased lifetime risks of both mental and physical illness.\[20][8][18][21]
IDVA § 103. Definitions. For the purposes of this Act, the following terms shall have the following meanings:

- (1) “Abuse” means physical abuse, harassment, intimidation of a dependent, interference with personal liberty or willful deprivation but does not include reasonable direction of a minor child by a parent or person in loco parentis.
- (3) “Domestic violence” means abuse as defined in paragraph (1).
- (6) “Family or household members” include spouses, former spouses, parents, children, stepchildren and other persons related by blood or by present or prior marriage, persons who share or formerly shared a common dwelling, persons who have or allegedly have a child in common, persons who share or allegedly share a blood relationship through a child, persons who have or have had a dating or engagement relationship, persons with disabilities and their personal assistants, and caregivers as defined in Section 12-4.4a of the Criminal Code of 2012. For purposes of this paragraph, neither a casual acquaintanceship nor ordinary fraternization between 2 individuals in business or social contexts shall be deemed to constitute a dating relationship. In the case of a high-risk adult with disabilities, “family or household members” includes any person who has the responsibility for a high-risk adult as a result of a family relationship or who has assumed responsibility for all or a portion of the care of a high-risk adult with disabilities voluntarily, or by express or implied contract, or by court order.
- (7) “Harassment” means knowing conduct which is not necessary to accomplish a purpose that is reasonable under the circumstances; would cause a reasonable person emotional distress; and does cause emotional distress to the petitioner.
IMDMA § 501. Temporary relief. In all proceedings under this Act, temporary relief shall be as follows:

- (a) Either party may petition or move for:
- (2) a temporary restraining order or preliminary injunction, accompanied by affidavit showing a factual basis for any of the following relief:
- (iii) enjoining a party from striking or interfering with the personal liberty of the other party or of any child; or
- (iv) providing other injunctive relief proper in the circumstances; or
IMDMA § 506. Representation of child.

• (a) Duties. In any proceedings involving the support, custody, visitation, allocation of parental responsibilities, education, parentage, property interest, or general welfare of a minor or dependent child, the court may, on its own motion or that of any party, appoint an attorney to serve in one of the following capacities to address the issues the court delineates:

• (1) Attorney. The attorney shall provide independent legal counsel for the child and shall owe the same duties of undivided loyalty, confidentiality, and competent representation as are due an adult client.

• (2) Guardian ad litem. The guardian ad litem shall testify or submit a written report to the court regarding his or her recommendations in accordance with the best interest of the child. The report shall be made available to all parties. The guardian ad litem may be called as a witness for purposes of cross-examination regarding the guardian ad litem's report or recommendations. The guardian ad litem shall investigate the facts of the case and interview the child and the parties.

• (3) Child representative. The child representative shall advocate what the child representative finds to be in the best interests of the child after reviewing the facts and circumstances of the case. The child representative shall meet with the child and the parties, investigate the facts of the case, and encourage settlement and the use of alternative forms of dispute resolution. The child representative shall have the same authority and obligation to participate in the litigation as does an attorney for a party and shall possess all the powers of investigation as does a guardian ad litem. The child representative shall consider, but not be bound by, the expressed wishes of the child. A child representative shall have received training in child advocacy or shall possess such experience as determined to be equivalent to such training by the chief judge of the circuit where the child representative has been appointed. The child representative shall not disclose confidential communications made by the child, except as required by law or by the Rules of Professional Conduct. The child representative shall not render an opinion, recommendation, or report to the court and shall not be called as a witness, but shall offer evidence-based legal arguments. The child representative shall disclose the position as to what the child representative intends to advocate in a pre-trial memorandum that shall be served upon all counsel of record prior to the trial. The position disclosed in the pre-trial memorandum shall not be considered evidence. The court and the parties may consider the position of the child representative for purposes of a settlement conference.

• (a-5) Appointment considerations. In deciding whether to make an appointment of an attorney for the minor child, a guardian ad litem, or a child representative, the court shall consider the nature and adequacy of the evidence to be presented by the parties and the availability of other methods of obtaining information, including social service organizations and evaluations by mental health professions, as well as resources for payment.
IMDMA § 505. Child support; contempt; penalties.

• (3.4) Deviation factors. In any action to establish or modify child support, whether pursuant to a temporary or final administrative or court order, the child support guidelines shall be used as a rebuttable presumption for the establishment or modification of the amount of child support. The court may deviate from the child support guidelines if the application would be inequitable, unjust, or inappropriate. Any deviation from the guidelines shall be accompanied by written findings by the court specifying the reasons for the deviation and the presumed amount under the child support guidelines without a deviation. These reasons may include:

• (A) extraordinary medical expenditures necessary to preserve the life or health of a party or a child of either or both of the parties;

• (B) additional expenses incurred for a child subject to the child support order who has special medical, physical, or developmental needs; and

• (C) any other factor the court determines should be applied upon a finding that the application of the child support guidelines would be inappropriate, after considering the best interest of the child.
IMDMA § 505. Child support; contempt; penalties.

• (4) Health care.

• (A) A portion of the basic child support obligation is intended to cover basic ordinary out-of-pocket medical expenses. The court, in its discretion, in addition to the basic child support obligation, shall also provide for the child's current and future medical needs by ordering either or both parents to initiate health insurance coverage for the child through currently effective health insurance policies held by the parent or parents, purchase one or more or all health, dental, or vision insurance policies for the child, or provide for the child's current and future medical needs through some other manner.

• (B) The court, in its discretion, may order either or both parents to contribute to the reasonable health care needs of the child not covered by insurance, including, but not limited to, unreimbursed medical, dental, orthodontic, or vision expenses and any prescription medication for the child not covered under the child's health insurance.
IMDMA § 600. Definitions. For purposes of this Part VI:

• (a) “Abuse” has the meaning ascribed to that term in Section 103 of the Illinois Domestic Violence Act of 1986.1
• (b) “Allocation judgment” means a judgment allocating parental responsibilities.
• (c) “Caretaking functions” means tasks that involve interaction with a child or that direct, arrange, and supervise the interaction with and care of a child provided by others, or for obtaining the resources allowing for the provision of these functions. The term includes, but is not limited to, the following:
  • (1) satisfying a child’s nutritional needs; managing a child’s bedtime and wake-up routines; caring for a child when the child is sick or injured; being attentive to a child’s personal hygiene needs, including washing, grooming, and dressing; playing with a child and ensuring the child attends scheduled extracurricular activities; protecting a child’s physical safety; and providing transportation for a child;
  • (2) directing a child’s various developmental needs, including the acquisition of motor and language skills, toilet training, self-confidence, and maturation;
  • (3) providing discipline, giving instruction in manners, assigning and supervising chores, and performing other tasks that attend to a child’s needs for behavioral control and self-restraint;
  • (4) ensuring the child attends school, including remedial and special services appropriate to the child’s needs and interests, communicating with teachers and counselors, and supervising homework;
  • (5) helping a child develop and maintain appropriate interpersonal relationships with peers, siblings, and other family members;
  • (6) ensuring the child attends medical appointments and is available for medical follow-up and meeting the medical needs of the child in the home;
  • (7) providing moral and ethical guidance for a child; and
  • (8) arranging alternative care for a child by a family member, babysitter, or other child care provider or facility, including investigating such alternatives, communicating with providers, and supervising such care.
• (d) “Parental responsibilities” means both parenting time and significant decision-making responsibilities with respect to a child.
• (e) “Parenting time” means the time during which a parent is responsible for exercising caretaking functions and non-significant decision-making responsibilities with respect to the child.
IMD&A § 602.5. Allocation of parental responsibilities: decision-making.

- (a) Generally. The court shall allocate decision-making responsibilities according to the child's best interests. Nothing in this Act requires that each parent be allocated decision-making responsibilities.
- (b) Allocation of significant decision-making responsibilities. Unless the parents otherwise agree in writing on an allocation of significant decision-making responsibilities, or the issue of the allocation of parental responsibilities has been reserved under Section 401, the court shall make the determination. The court shall allocate to one or both of the parents the significant decision-making responsibility for each significant issue affecting the child. Those significant issues shall include, without limitation, the following:
  - (1) Education, including the choice of schools and tutors.
  - (2) Health, including all decisions relating to the medical, dental, and psychological needs of the child and to the treatments arising or resulting from those needs.
  - (3) Religion, subject to the following provisions:
    - (A) The court shall allocate decision-making responsibility for the child's religious upbringing in accordance with any express or implied agreement between the parents.
    - (B) The court shall consider evidence of the parents' past conduct as to the child's religious upbringing in allocating decision-making responsibilities consistent with demonstrated past conduct in the absence of an express or implied agreement between the parents.
    - (C) The court shall not allocate any aspect of the child's religious upbringing if it determines that the parents do not or did not have an express or implied agreement for such religious upbringing or that there is insufficient evidence to demonstrate a course of conduct regarding the child's religious upbringing that could serve as a basis for any such order.
  - (4) Extracurricular activities.
- (c) Determination of child's best interests. In determining the child's best interests for purposes of allocating significant decision-making responsibilities, the court shall consider all relevant factors, including, without limitation, the following:
  - (1) the wishes of the child, taking into account the child's maturity and ability to express reasoned and independent preferences as to decision-making;
  - (4) the ability of the parents to cooperate to make decisions, or the level of conflict between the parties that may affect their ability to share decision-making;
  - (10) whether a restriction on decision-making is appropriate under Section 603.10;
  - (11) the willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the other parent and the child; and
  - (15) any other factor that the court expressly finds to be relevant.
IMDMA § 602.7. Allocation of parental responsibilities: parenting time.

- (a) Best interests. The court shall allocate parenting time according to the child's best interests.
- (b) Allocation of parenting time. Unless the parents present a mutually agreed written parenting plan and that plan is approved by the court, the court shall allocate parenting time. It is presumed both parents are fit and the court shall not place any restrictions on parenting time as defined in Section 600 and described in Section 603.10, unless it finds by a preponderance of the evidence that a parent's exercise of parenting time would seriously endanger the child's physical, mental, moral, or emotional health.

In determining the child's best interests for purposes of allocating parenting time, the court shall consider all relevant factors, including, without limitation, the following:

- (2) the wishes of the child, taking into account the child's maturity and ability to express reasoned and independent preferences as to parenting time;
- (5) the interaction and interrelationship of the child with his or her parents and siblings and with any other person who may significantly affect the child's best interests;
- (7) the mental and physical health of all individuals involved;
- (12) the willingness and ability of each parent to place the needs of the child ahead of his or her own needs;
- (13) the willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the other parent and the child;
- (14) the occurrence of abuse against the child or other member of the child's household;
- (17) any other factor that the court expressly finds to be relevant.
IMDMA § 602.8. Parenting time by parents not allocated significant decision-making responsibilities.

• (a) A parent who has established parentage under the laws of this State and who is not granted significant decision-making responsibilities for a child is entitled to reasonable parenting time with the child, subject to subsections (d) and (e) of Section 603.10 of this Act, unless the court finds, after a hearing, that the parenting time would seriously endanger the child's mental, moral, or physical health or significantly impair the child's emotional development. The order setting forth parenting time shall be in the child's best interests pursuant to the factors set forth in subsection (b) of Section 602.7 of this Act.

• (b) The court may modify an order granting or denying parenting time pursuant to Section 610.5 of this Act. The court may restrict parenting time, and modify an order restricting parenting time, pursuant to Section 603.10 of this Act.
IMDMA § 602.9. Visitation by certain non-parents.

(a) As used in this Section:

(4) "visitation" means in-person time spent between a child and the child’s grandparent, great-grandparent, sibling, step-parent, or any person designated under subsection (d) of Section 602.7. In appropriate circumstances, visitation may include electronic communication under conditions and at times determined by the court.

(b) General provisions.

(1) An appropriate person, as identified in subsection (c) of this Section, may bring an action in circuit court by petition, or by filing a petition in a pending dissolution proceeding or any other proceeding that involves parental responsibilities or visitation issues regarding the child, requesting visitation with the child pursuant to this Section. If there is not a pending proceeding involving parental responsibilities or visitation with the child, the petition for visitation with the child must be filed in the county in which the child resides. Notice of the petition shall be given as provided in subsection (c) of Section 601.2 of this Act.

(2) A petition for visitation may be filed under this Section only if there has been an unreasonable denial of visitation by a parent and the denial has caused the child undue mental, physical, or emotional harm.

(4) There is a rebuttable presumption that a fit parent’s actions and decisions regarding grandparent, great-grandparent, sibling, or step-parent visitation are not harmful to the child’s mental, physical, or emotional health. The burden is on the party filing a petition under this Section to prove that the parent’s actions and decisions regarding visitation will cause undue harm to the child’s mental, physical, or emotional health.

(5) In determining whether to grant visitation, the court shall consider the following:

(A) the wishes of the child, taking into account the child’s maturity and ability to express reasoned and independent preferences as to visitation;

(H) any other fact that establishes that the loss of the relationship between the petitioner and the child is likely to unduly harm the child’s mental, physical, or emotional health; and

(I) whether visitation can be structured in a way to minimize the child’s exposure to conflicts between the adults.

(7) The court may order visitation rights for the grandparent, great-grandparent, sibling, or step-parent that include reasonable access without requiring overnight or possessory visitation.

(c) Visitation by grandparents, great-grandparents, step-parents, and siblings.

(1) Grandparents, great-grandparents, step-parents, and siblings of a minor child who is one year old or older may bring a petition for visitation and electronic communication under this Section if there is an unreasonable denial of visitation by a parent that causes undue mental, physical, or emotional harm to the child and if at least one of the following conditions exists:
IMDMA § 602.11. Access to health care, child care, and school records by parents.

• (a) Notwithstanding any other provision of law, access to records and information pertaining to a child including, but not limited to, medical, dental, child care, and school records shall not be denied to a parent for the reason that such parent has not been allocated parental responsibility; however, no parent shall have access to the school records of a child if the parent is prohibited by an order of protection from inspecting or obtaining such records pursuant to the Domestic Violence Act of 1986 or the Code of Criminal Procedure of 1963.

• (b) Health care professionals and health care providers shall grant access to health care records and information pertaining to a child to both parents, unless the health care professional or health care provider receives a court order or judgment that denies access to a specific individual. Except as may be provided by court order, no parent who is a named respondent in an order of protection issued pursuant to the Illinois Domestic Violence Act of 1986$^1$ or the Code of Criminal Procedure of 1963$^2$ shall have access to the health care records of a child who is a protected person under the order of protection provided the health care professional or health care provider has received a copy of the order of protection. Access to health care records is denied under this Section for as long as the order of protection remains in effect as specified in the order of protection or as otherwise determined by court order.
IMDMA § 603.5. Temporary orders.

• (a) A court may order a temporary allocation of parental responsibilities in the child's best interests before the entry of a final allocation judgment. Any temporary allocation shall be made in accordance with the standards set forth in Sections 602.5 and 602.7: (i) after a hearing; or (ii) if there is no objection, on the basis of a parenting plan that, at a minimum, complies with subsection (f) of Section 602.10.
IMDMA § 603.10. Restriction of parental responsibilities.

• (a) After a hearing, if the court finds by a preponderance of the evidence that a parent engaged in any conduct that seriously endangered the child's mental, moral, or physical health or that significantly impaired the child's emotional development, the court shall enter orders as necessary to protect the child. Such orders may include, but are not limited to, orders for one or more of the following:
  • (1) a reduction, elimination, or other adjustment of the parent's decision-making responsibilities or parenting time, or both decision-making responsibilities and parenting time;
  • (2) supervision, including ordering the Department of Children and Family Services to exercise continuing supervision under Section 5 of the Children and Family Services Act;
  • (4) restraining a parent's communication with or proximity to the other parent or the child;
  • (7) requiring a parent to post a bond to secure the return of the child following the parent's exercise of parenting time or to secure other performance required by the court;
  • (8) requiring a parent to complete a treatment program for perpetrators of abuse, for drug or alcohol abuse, or for other behavior that is the basis for restricting parental responsibilities under this Section; and
  • (9) any other constraints or conditions that the court deems necessary to provide for the child's safety or welfare.
  • (b) The court may modify an order restricting parental responsibilities if, after a hearing, the court finds by a preponderance of the evidence that a modification is in the child's best interests based on (i) a change of circumstances that occurred after the entry of an order restricting parental responsibilities; or (ii) conduct of which the court was previously unaware that seriously endangers the child. In determining whether to modify an order under this subsection, the court must consider factors that include, but need not be limited to, the following:
    • (1) abuse, neglect, or abandonment of the child;
    • (4) persistent continuing interference with the other parent's access to the child, except for actions taken with a reasonable, good-faith belief that they are necessary to protect the child's safety pending adjudication of the facts underlying that belief, provided that the interfering parent initiates a proceeding to determine those facts as soon as practicable.
IMDMA § 604.10. Interviews; evaluations; investigation.

- (a) Court's interview of child. The court may interview the child in chambers to ascertain the child's wishes as to the allocation of parental responsibilities. Counsel shall be present at the interview unless otherwise agreed upon by the parties. The entire interview shall be recorded by a court reporter. The transcript of the interview shall be filed under seal and released only upon order of the court.

- (b) Court's professional. The court may seek the advice of any professional, whether or not regularly employed by the court, to assist the court in determining the child's best interests. The advice to the court shall be in writing and sent by the professional to counsel for the parties and to the court not later than 60 days before the date on which the trial court reasonably anticipates the hearing on the allocation of parental responsibilities will commence. The court may review the writing upon receipt. The writing may be admitted into evidence without testimony from its author, unless a party objects. A professional consulted by the court shall testify as the court's witness and be subject to cross-examination. The court shall order all costs and fees of the professional to be paid by one or more of the parties, subject to reallocation in accordance with subsection (a) of Section 508.

- (c) Evaluation by a party's retained professional. In a proceeding to allocate parental responsibilities or to relocate a child, upon notice and motion made by a parent or any party to the litigation within a reasonable time before trial, the court shall order an evaluation to assist the court in determining the child's best interests unless the court finds that an evaluation under this Section is untimely or not in the best interests of the child. The evaluation may be in place of or in addition to any advice given to the court by a professional under subsection (b). A motion for an evaluation under this subsection must, at a minimum, identify the proposed evaluator and the evaluator's specialty or discipline. An order for an evaluation under this subsection must set forth the evaluator's name, address, and telephone number and the time, place, conditions, and scope of the evaluation. No person shall be required to travel an unreasonable distance for the evaluation. The party requesting the evaluation shall pay the evaluator's fees and costs unless otherwise ordered by the court.

- (d) Investigation. Upon notice and a motion by a parent or any party to the litigation, or upon the court's own motion, the court may order an investigation and report to assist the court in allocating parental responsibilities. The investigation may be made by any agency, private entity, or individual deemed appropriate by the court. The agency, private entity, or individual appointed by the court must have expertise in the area of allocation of parental responsibilities. The court shall specify the purpose and scope of the investigation.
IMDMA § 607.5. Abuse of allocated parenting time.

• (a) The court shall provide an expedited procedure for the enforcement of allocated parenting time.

• (b) An action for the enforcement of allocated parenting time may be commenced by a parent or a person appointed under Section 506 by filing a petition setting forth: (i) the petitioner's name and residence address or mailing address, except that if the petition states that disclosure of petitioner's address would risk abuse of petitioner or any member of petitioner's family or household or reveal the confidential address of a shelter for domestic violence victims, that address may be omitted from the petition; (ii) the respondent's name and place of residence, place of employment, or mailing address; (iii) the terms of the parenting plan or allocation judgment then in effect; (iv) the nature of the violation of the allocation of parenting time, giving dates and other relevant information; and (v) that a reasonable attempt was made to resolve the dispute.

• (c) If the court finds by a preponderance of the evidence that a parent has not complied with allocated parenting time according to an approved parenting plan or a court order, the court, in the child's best interests, shall issue an order that may include one or more of the following:
  • (1) an imposition of additional terms and conditions consistent with the court's previous allocation of parenting time or other order;
  • (2) a requirement that either or both of the parties attend a parental education program at the expense of the non-complying parent;
  • (3) upon consideration of all relevant factors, particularly a history or possibility of domestic violence, a requirement that the parties participate in family or individual counseling, the expense of which shall be allocated by the court; if counseling is ordered, all counseling sessions shall be confidential, and the communications in counseling shall not be used in any manner in litigation nor relied upon by an expert appointed by the court or retained by any party;
  • (4) a requirement that the non-complying parent post a cash bond or other security to ensure future compliance, including a provision that the bond or other security may be forfeited to the other parent for payment of expenses on behalf of the child as the court shall direct;
  • (6) a finding that the non-complying parent is in contempt of court;
  • (7) an imposition on the non-complying parent of an appropriate civil fine per incident of denied parenting time;
  • (8) a requirement that the non-complying parent reimburse the other parent for all reasonable expenses incurred as a result of the violation of the parenting plan or court order; and
  • (9) any other provision that may promote the child's best interests.

• (d) In addition to any other order entered under subsection (c), except for good cause shown, the court shall order a parent who has failed to provide allocated parenting time or to exercise allocated parenting time to pay the aggrieved party his or her reasonable attorney's fees, court costs, and expenses associated with an action brought under this Section. If the court finds that the respondent in an action brought under this Section has not violated the allocated parenting time, the court may order the petitioner to pay the respondent's reasonable attorney's fees, court costs, and expenses incurred in the action.
IMDMA § 607.6. Counseling.

- (a) The court may order individual counseling for the child, family counseling for one or more of the parties and the child, or parental education for one or more of the parties, if it finds one or more of the following:
  - (2) the child's physical health is endangered or that the child's emotional development is impaired;
  - (3) abuse of allocated parenting time under Section 607.5 has occurred; or
  - (4) one or both of the parties have violated the allocation judgment with regard to conduct affecting or in the presence of the child.
- (b) The court may apportion the costs of counseling between the parties as appropriate.
- (d) All counseling sessions shall be confidential. The communications in counseling shall not be used in any manner in litigation nor relied upon by any expert appointed by the court or retained by any party.
IMDMA § 609.2. Parent's relocation.

§ 609.2. Parent's relocation.

(a) A parent's relocation constitutes a substantial change in circumstances for purposes of Section 610.5.

(g) The court shall modify the parenting plan or allocation judgment in accordance with the child's best interests. The court shall consider the following factors:

(3) the history and quality of each parent's relationship with the child and specifically whether a parent has substantially failed or refused to exercise the parental responsibilities allocated to him or her under the parenting plan or allocation judgment;

(8) the wishes of the child, taking into account the child's maturity and ability to express reasoned and independent preferences as to relocation;

(11) any other relevant factors bearing on the child's best interests.
IMDMA § 610.5. Modification.

• (a) Unless by stipulation of the parties or except as provided in Section 603.10 of this Act, no motion to modify an order allocating parental decision-making responsibilities, not including parenting time, may be made earlier than 2 years after its date, unless the court permits it to be made on the basis of affidavits that there is reason to believe the child's present environment may endanger seriously his or her mental, moral, or physical health or significantly impair the child's emotional development. Parenting time may be modified at any time, without a showing of serious endangerment, upon a showing of changed circumstances that necessitates modification to serve the best interests of the child.

• (c) Except in a case concerning the modification of any restriction of parental responsibilities under Section 603.10, the court shall modify a parenting plan or allocation judgment when necessary to serve the child's best interests if the court finds, by a preponderance of the evidence, that on the basis of facts that have arisen since the entry of the existing parenting plan or allocation judgment or were not anticipated therein, a substantial change has occurred in the circumstances of the child or of either parent and that a modification is necessary to serve the child's best interests.
Case Law

- **In re Marriage of Young, 2015 IL App(3d) 150553**
  - Wife appealed award of joint custody with residential custody to husband. Affirmed holding best interest factors support award to husband. Trial court emphasized wife’s systemic efforts to exclude husband as key consideration in awarding custody to husband, reasoning it was the only way to ensure the active involvement of both parents. Wife enrolled child in school, daycare and activities without discussing them with husband. She took husband off of daycare list which precluded him from calling the child at daycare or pick-up the child early. She would not send homework with child to father’s home. She ended Skype sessions claiming it was an invasion of her privacy.

- **In re Marriage of Spent, (4th Dist. 2003) 342 Ill.App.3d 643, 796 N.E.2d 191**
  - Mother’s conduct in denying visitation and phone contact with father and in disparaging father in front of child support award of residential custody to father, where evidence demonstrated mother failed to foster a close relationship between child and his father.

- **In re A.S., (5th Dist. 2009) 394 Ill.App.3d 204, 916 N.E.2d 123,**
  - Father’s disrespect to child’s mother, unilateral change of the parties’ custody agreement, and attempt to obtain sole custody of child supported trial court’s award of residential custody to mother, who would better facilitate relationship between child and his father.
Case Law

- In re Marriage of Debra N. & Michael S., 2013 IL App(1st) 122145
  
  In award of custody to the father, the trial court found that mother lacked credibility and “engaged in a pattern of interference and manipulation” including “a pattern of conduct designed to harass [the father], to limit his parenting time, summer, vacation and holiday time with [the child], and to potentially alienate [the child] from a healthy relationship with her father and family.”

- In re Marriage of Quindry, (5th Dist. 1992) 223 Ill.App.3d 735, 585 N.E.2d 1312.
  
  Court affirmed custody award to father. Parties separated while they were living in Arizona. Wife left Arizona without telling husband. Wife returned home with the child to her parent’s home in Illinois. Wife did not inform husband of child’s whereabouts and failed to inform husband of her new address and phone number when she and the child moved out of her parent’s home. The court observed such actions reflect negatively upon mother’s willingness to facilitate and encourage a close and continuing relationship between father and child and necessarily must be factored into the custody determination.

  
  Court affirmed award of custody to father. Trial court found that wife had made false allegations against husband with DCFS concerning alleged sexual misconduct with husband’s 12 year old daughter from a prior marriage. Trial court found that wife’s deliberate lie with regard to the sexual abuse allegations was evidence that she wanted to win more than she wanted to do what was best for the parties’ child. Appellate court considered the allegation relevant under the “willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the other parent and the child. (750 ILCS 5/602(a)(7) (West 1992)). Appellate court held that while one false allegation does not constitute a “scheme,” such an allegation may be considered with other evidence in finding where the best interests of the child lie.
Case Law

  - Appellate court affirmed transfer of custody to father. Evidence that mother refused to use father’s surname as children’s surname, had filed false sexual abuse complaints against father and had limited or denied him visitation was sufficient to support finding that mother had engaged in scheme to terminate father’s parental rights and to destroy children’s relationship with him.

- **In re Marriage of D.T.W. and S.L.W.,** 2011 IL App(1st) 111225.
  - Appellate court affirmed grant of sole custody to father. Trial court found “Respondent has embarked upon an unstoppable and relentless pattern of conduct for over two years to alienate the children from their father, and lacks either the ability or the willingness to facilitate, let alone encourage, a close and continuing relationship between them.” The court also found that the father was willing to encourage a close and continuing relationship between the children and their mother. Trial court’s conclusion that “awarding sole custody to D.T. affords the best possibility of securing the maximum involvement and cooperation of both parents regarding the physical, mental, moral and emotional well-being of [the children].” Trial court’s decision was not against the manifest weight of the evidence.

- **In re Marriage of Divelbiss,** (2nd Dist. 1999) 308 Ill.App.3d 198, 719 N.E.2d 375.
  - Father filed a custody modification proceeding. The trial court found that the mother was unwilling to facilitate and encourage a close and continuing relationship between the child and the father based upon repeated denials of visitation; repeated unsubstantiated reports to DCFS, and repeated videotaping of visitation exchanges and which the mother involved the children in staging. Trial court concluded that the mother’s conduct had not been conducive to fostering a good relationship between the child and the father. Appellate court affirmed modification of joint custody arrangement to provide for rotating custody, with father having residential custody from close of school for summer until November. The trial court found evidence of substantial parental alienation by the mother which would require that the child spend an extended period of time with the father with less interference from the mother. The trial court noted that the parents live in close proximity to each other so that school and friends were not an issue.
Case Law


• Father filed motion to modify custody. The trial court awarded custody to the father and restricted the mother’s visitation rights pending a professional evaluation. The father testified that the child had been removed from her previous school without his knowledge that he was required to go to court to learn of her new school, home address and phone number. The mother called the police on three occasions while the child was visiting the father in Florida. The mother interfered with the father’s telephone calls to the child and his calls were generally unanswered or unreturned. The mother made unsubstantiated claims about the father abusing alcohol. All of the experts testimony supported the conclusion that the mother had consistently failed to facilitate and encourage a close and continuing relationship between the child and the father. Dr. Blechman reported that the mother had induced alienation of the child from the father. The trial court based its best interest finding supporting a change of custody on the 602(a)(8) standard, namely: “The willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the parents and child.” The supreme court held that the decision was not against the manifest weight of the evidence.
Case Law

- **In re Marriage of Chatterjee and Maroney**, 2014 IL App(3d) 140111-U
  - Affirmed the trial court’s denial of mother’s petition for modification to allow unsupervised visitation based upon mother’s history of alienation of child.

- **In re Marriage of Gricki**, 2016 IL App(1st) 160791-U
  - Affirmed the trial court’s grant of mother’s petition to remove child to Florida. Judgment of dissolution of marriage allowed father unsupervised visitation. Visitation was later restricted based upon allegations of father’s alienating behavior, including reports that upon return from a visitation, seven year old child told mother that she was not his mother, that he hated her, that he wanted to “hurt her dead,” and that when he gets old enough he’s going to tell the judge he wants to live with daddy. Appellate court affirmed the relocation even though the court considered the relocation factors under the prior statute. The court gave much weight and consideration to the father’s history of alienating behavior.

- **In re Custody of D.H.,** 2015 IL App(1st) 142776-U
  - The trial court denied the father’s petition for modification of custody. On appeal, the Public Guardian and father asserted that the trial court failed to properly consider the evidence supporting his position that the mother had an inability to encourage the relationship between the child and the father. The trial court found that both parents had engaged in alienating behavior but that the “willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the child and the other parent” slightly weighed in favor of the mother. The appellate court found that the finding was supported by the evidence and affirmed the trial court’s denial of the father’s petition for modification.
Case Law

• In re Marriage of Brian D.G. and Sarah B.G., 2017 IL App(3d) 170427-U
  Affirmed trial court’s allocation of sole decision-making responsibilities and majority of parenting time to father. Trial court did not act against the manifest weight of the evidence given evidence that mother currently lacked the ability to place the needs of the children over the anxiety and frustration of the dissolution and lacked the willingness to facilitate and encourage a continuous relationship between the children and the father.

• In re Marriage of Moore, 2018 IL App(3d) 170279-U
  Trial court granted mother’s petition to suspend father visitation finding that father’s campaign to wreak havoc upon the children and the mother’s family posed a risk of serious endangerment to the children’s physical, mental, moral and emotional well-being. Court found among other things, the father caused the police to be called, caused firefighters to be called, caused the children to videotape the mother.

• In re Marriage of Brooks, 2018 IL App (5th) 170415-U
  Trial court’s decision to give father sole parental responsibility for significant decisions and the majority of the parenting time as well as supervised parenting time for mother was not against the manifest weight of the evidence where there was significant evidence showing the mother damaged the children’s relationship with their father. Abuse included unfounded reports to DCFS, unfounded allegations of sexual abuse, coaching by mother as to what children should say in counseling sessions.